

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

In the Matters of:

RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg  
Debtors.

- - - - -x

RESIDENTIAL CAPITAL, LLC, et al.,  
Plaintiffs, Adv. No. 13-01343-mg

- against -

UMB BANK, N.A., in its Capacity as  
INDENTURE TRUSTEE,  
Defendant.

- - - - -x

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS, et al.,

Plaintiffs, Adv. No. 13-01277-mg

- against -

UMB BANK, N.A., et al.,  
Defendants.

- - - - -x

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

United States Bankruptcy Court  
One Bowling Green  
New York, New York

November 25, 2013  
9:02 AM

B E F O R E:  
HON. MARTIN GLENN  
U.S. BANKRUPTCY JUDGE

1 12-12020-mg Residential Capital, LLC

2 PHASE II TRIAL

3

4 Adversary proceeding: 13-01277-mg Official Committee of  
5 Unsecured Creditors et al. v. UMB Bank, N.A., et al.

6 PHASE II TRIAL

7

8 Adversary proceeding: 13-01343-mg Residential Capital, LLC et  
9 al. v. UMB Bank, N.A., in its Capacity as Indenture Trustee

10 PHASE II TRIAL

11

12 12-12020-mg Residential Capital, LLC

13 CONFIRMATION HEARING.

14

15 Fairness Hearing RE: Kessler Settlement Class.

16

17 Doc# 5828, 5829 Motion for Approval of Debtors Entry Into the  
18 Settlement Agreement Among the Debtors, The Committee, and Ally

19

20 Transcribed by: Penina Wolicki

21 eScribers, LLC

22 700 West 192nd Street, Suite #607

23 New York, NY 10040

24 (973)406-2250

25 operations@escribers.net

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S :

MORRISON & FOERSTER LLP

Attorneys for Debtors

1290 Avenue of the Americas

New York, NY 10104

BY: GARY S. LEE, ESQ.

CHARLES L. KERR, ESQ.

LORENZO MARINUZZI, ESQ.

JOSEPH ALEXANDER LAWRENCE, ESQ.

JAMES J. BEHA, II, ESQ.

MORRISON & FOERSTER LLP

Attorneys for Debtors

755 Page Mill Road

Palo Alto, CA 94304

BY: DARRYL P. RAINS, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

Conflicts Counsel to Debtors

101 Park Avenue

New York, NY 10178

BY: THERESA A. FOU DY, ESQ.

ELLEN TOBIN, ESQ.

SILVERMANACAMPORA LLP

Special Counsel to Creditors' Committee

100 Jericho Quadrangle

Suite 300

Jericho, NY 11753

BY: RONALD J. FRIEDMAN, ESQ.

ROBERT D. NOSEK, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

U.S. DEPARTMENT OF JUSTICE

U.S. Attorney's Office

86 Chambers Street

3rd Floor

New York, NY 10007

BY: JOSEPH N. CORDARO, ESQ.

KIRKLAND & ELLIS LLP

Attorneys for Ally Bank and Ally Financial, Inc.

601 Lexington Avenue

New York, NY 10022

BY: RAY C. SCHROCK, P.C.

KIRKLAND & ELLIS LLP

Attorneys for Ally Bank and Ally Financial, Inc.

655 Fifteenth Street, N.W.

Washington, DC 20005

BY: DANIEL T. DONOVAN, ESQ.

JUDSON D. BROWN, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

KIRKLAND & ELLIS LLP

Attorneys for Ally Bank and Ally Financial, Inc.

555 California Street

San Francisco, CA 94104

BY: MARK E. MCKANE, P.C.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Attorneys for Official Creditors' Committee

1177 Avenue of the Americas

New York, NY 10036

BY: KENNETH H. ECKSTEIN, ESQ.

PHILIP S. KAUFMAN, ESQ.

DOUGLAS MANNAL, ESQ.

STEPHEN ZIDE, ESQ.

P. BRADLEY O'NEILL, ESQ.

JOSEPH A. SHIFER, ESQ.

NORMAN C. SIMON, ESQ.

GREGORY A. HOROWITZ, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
Attorneys for Ad Hoc Group of Junior Secured Notes  
1633 Broadway  
New York, NY 10019

BY: DANIEL A. FLIMAN, ESQ.

MILBANK, TWEED, HADLEY & MCCLOY LLP  
Attorneys for Ad Hoc Group of Junior Secured Notes  
1850 K Street, NW  
Washington, DC 20005

BY: DAVID S. COHEN, ESQ.

MILBANK, TWEED, HADLEY & MCCLOY LLP  
Attorneys for Ad Hoc Group of Junior Secured Notes  
One Chase Manhattan Plaza  
New York, NY 10005

BY: GERARD UZZI, ESQ.  
DANIEL M. PERRY, ESQ.  
ATARA MILLER, ESQ.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MORGAN, LEWIS & BOCKIUS LLP

Attorneys for Deutsche Bank, Bank of NY Mellon

101 Park Avenue

New York, NY 10178

BY: GLENN E. SIEGEL, ESQ.

JAMES L. GARRITY, JR., ESQ.

JONES DAY

Attorneys for FGIC

222 East 41st Street

New York, NY 10017

BY: LANCE E. MILLER, ESQ.

JONES DAY

Attorneys for FGIC

555 South Flower Street

Fiftieth Floor

Los Angeles, CA 90071

BY: RICHARD L. WYNNE, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WINSTON & STRAWN LLP

Attorneys for WFBNA - Wachovia

200 Park Avenue

New York, NY 10166

BY: JAMES DONNELL, ESQ.

NATHAN P. LEBIODA, ESQ.

ROPES & GRAY LLP

Attorneys for Institutional Investor Steering Committee

800 Boylston Street

Boston, MA 02199

BY: D. ROSS MARTIN, ESQ.

ANDREW G. DEVORE, ESQ.

ALLEN & OVERY LLP

Attorneys for HSBC Bank USA, N.A. as Trustee

1221 Avenue of the Americas

New York, NY 10020

BY: JOHN KIBLER, ESQ.

1 MORRISON COHEN LLP

2 Attorneys for Independent Directors

3 909 Third Avenue

4 New York, NY 10022

5

6 BY: JOSEPH T. MOLDOVAN, ESQ.

7

8

9 SEWARD & KISSEL LLP

10 Attorneys for US Bank as RMBS Trustee

11 One Battery Park Plaza

12 New York, NY 10004

13

14 BY: MARK D. KOTWICK, ESQ.

15 THOMAS ROSS HOOPER, ESQ.

16 ARLENE R. ALVES, ESQ.

17 DALE C. CHRISTENSEN, JR., ESQ.

18

19

20 CADWALADER, WICKERSHAM & TAFT LLP

21 Attorneys for MBIA Insurance Co.

22 700 6th Street NW,

23 Washington, DC 20001

24

25 BY: MARK C. ELLENBERG, ESQ.

1 CLEARY GOTTlieb STEEN & HAMILTON LLP

2 Attorneys for Wilmington Trust

3 One Liberty Plaza

4 New York, NY 10006

5

6 BY: MARK A. LIGHTNER, ESQ.

7 JEREMY R. OPOLSKY, ESQ.

8

9

10 PENSION BENEFIT GUARANTY CORPORATION

11 Office of the Chief Counsel

12 1200 K Street, N.W.

13 Washington, DC 20005

14

15 BY: VICENTE MATIAS MURRELL, ESQ.

16

17

18 REED SMITH LLP

19 Attorneys for Wells Fargo Bank, N.A.

20 599 Lexington Avenue

21 New York, NY 10022

22

23 BY: ERIC A. SCHAFFER, ESQ.

24 MARK D. SILVERSCHOTZ, ESQ.

25 DAVID M. SCHLECKER, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

LOWENSTEIN SANDLER LLP

Attorneys for N.J. Carpenters

65 Livingston Avenue

Roseland, NJ 07068

BY: MICHAEL S. ETKIN, ESQ.

TANIA INGMAN, ESQ.

DECHERT LLP

Attorneys for Bank of New York Mellon

1095 Avenue of the Americas

New York, NY 10036

BY: MAURICIO A. ESPANA, ESQ.

ALSTON & BIRD LLP

Attorneys for Wells Fargo Bank, N.A.

90 Park Avenue

15th Floor

New York, NY 10016

BY: MICHAEL E. JOHNSON, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

POLSINELLI

Attorneys for Kessler Settlement Class  
700 West 47th Street  
Suite 1000  
Kansas City, MO 64112

BY: DAN FLANIGAN, ESQ.

ZUCKERMAN SPAEDER LLP

Attorneys for National Credit Union Administration Board  
1800 M Street, NW  
Washington, DC 20035

BY: ANDREW N. GOLDFARB, ESQ.

SCHULTE ROTH & ZABEL, LLP

Attorneys for Cerberus Capital Management  
919 Third Avenue  
New York, NY 10022

BY: HOWARD O. GODNICK, ESQ. (TELEPHONICALLY)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MUNGER, TOLLES & OLSON LLP

Attorneys for Berkshire Hathaway, Inc.

355 South Grand Avenue

35th Floor

Los Angeles, CA 90071

BY: THOMAS B. WALPER, ESQ. (TELEPHONICALLY)

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Attorneys for AIG, Allstate, Prudential, and Mass Mutual

51 Madison Avenue

22nd Floor

New York, NY 10010

BY: SCOTT C. SHELLEY, ESQ.

ALSO PRESENT:

RICHARD RODE, Party Pro Se

STEVEN TILGHMAN, Tilghman & Company (TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 All right. We're here in Residential Capital number  
4 12-12020 and in connection with two adversary proceedings,  
5 number 13-01343 and 13-01277. All right.

6 We're ready to go with our last witness. Mr. Perry?

7 MR. PERRY: Good morning, Your Honor. The JSNs offer  
8 the direct testimony of Michael Fazio, dated November 12, 2013,  
9 which was filed as docket entry 5711. If Mr. Fazio were called  
10 to testify, he would testify as to what is in his written  
11 direct testimony. We therefore offer his direct testimony into  
12 evidence. We have binders with the testimony.

13 Your Honor, we have over the weekend, met and  
14 conferred with the debtors and agreed to remove certain  
15 portions of Mr. Fazio's report referencing Judge Lyons. I  
16 believe Mr. Kerr has an objection; he doesn't think it goes  
17 quite far enough, and so we have our proposal and I'll cede the  
18 podium to Mr. Kerr.

19 THE COURT: Okay.

20 MR. HOROWITZ: Excuse me, Your Honor. Greg Horowitz  
21 for the creditors' committee.

22 THE COURT: Yes, Mr. Horowitz.

23 MR. HOROWITZ: We never received a copy of this new  
24 proposed direct testimony, nor were we consulted. I'd like to  
25 get a copy.



1 THE COURT: Mr. Perry, is there some reason you didn't  
2 consult with a party-in-interest, one of the proponents of the  
3 plan?

4 MR. PERRY: My understanding was --

5 THE COURT: We've got two separate adversary  
6 proceedings --

7 MR. PERRY: No, no --

8 THE COURT: -- one brought by the committee -- stop.  
9 Two separate adversary proceedings, one brought by the  
10 committee, one brought by the debtors. They're co-proponents  
11 of the plan. The committee needed to be consulted. All right.  
12 Let me have it.

13 Mr. Kerr, you want to be heard?

14 MR. KERR: Good morning, Your Honor. Charles Kerr of  
15 Morrison & Foerster on behalf of the debtors. We do object to  
16 certain additional portions of the direct testimony of Mr.  
17 Fazio that Mr. Perry has just handed up.

18 Just to kind of bring it back into context, Mr.  
19 Fazio's report, which was -- his original October 18th report  
20 and his direct testimony, which was filed November 12th,  
21 referred to and incorporated a series of opinions and  
22 statements by Judge Lyons. And when Judge Lyons' report was  
23 excluded, his testimony was excluded, we raised on Wednesday  
24 morning the fact that those portions of Mr. Fazio's testimony  
25 should be deleted as well.

1           We've gone back and forth. Last night at 10:07 we  
2 received their proposed language about what should be taken  
3 out, and we don't think it goes far enough, Your Honor.  
4 Specifically, in his -- both his October 18th, 2013 expert  
5 report and then as incorporated into his direct testimony, Mr.  
6 Fazio incorporated in his scenarios B and C the numbers and  
7 analysis done by Judge Lyons, and that we think, should all be  
8 taken out, Your Honor.

9           I have an alternative proposed redaction of what I  
10 think should come out of Mr. Fazio's report. I sent it to the  
11 JSNs last Wednesday, we've talked about it. What they've  
12 submitted doesn't go quite far enough, Your Honor. So -- and I  
13 can go through by line and by page what it is that we think  
14 should be further deleted beyond what they have done already,  
15 if that would be helpful to you.

16           THE COURT: Let me ask this, Mr. Perry, looking at the  
17 binder that's just been handed to me, I see that in the direct  
18 testimony of Michael Fazio there are certain portions that are  
19 highlighted. Are those the proposed redactions?

20           MR. PERRY: Yes, Your Honor.

21           THE COURT: Well, the way I think we should proceed is  
22 that I'm not admitting the direct testimony until the committee  
23 has had an opportunity to review the proposed redactions. Mr.  
24 Kerr, if you have a marked copy of the direct testimony with  
25 the redactions --

1 MR. KERR: I do, Your Honor.

2 THE COURT: -- I don't care whether it's redacted  
3 frankly --

4 MR. KERR: Your Honor --

5 THE COURT: -- I mean, as you've done in the past,  
6 I'll rule on objections to specific page -- paragraph  
7 references or portions of paragraphs. So if you've got a  
8 proposed version of Mr. Fazio's direct testimony as to what  
9 should be excluded, let me have that. And we're going to  
10 proceed with, as we've done, I think, with several other  
11 witnesses, let's put him up here for cross-examination. I'll  
12 reserve ruling on what in his direct testimony is admissible.

13 MR. KERR: I do, Your Honor. Let me hand them up, if  
14 I can.

15 THE COURT: Okay. All right. Have you consulted with  
16 Mr. Horowitz?

17 MR. KERR: Yes, we did. Well --

18 MR. HOROWITZ: Your Honor, I first learned of this  
19 when Mr. Kerr told me about it about five minutes before we  
20 started, but he did consult with me.

21 THE COURT: Well, look, you weren't here on Friday.

22 MR. HOROWITZ: I actually was. I was just upstairs.

23 THE COURT: Well, you weren't in the courtroom. We  
24 had a discussion about Mr. Fazio and issues about whether an  
25 amended modified direct testimony by Mr. Fazio would be

1 permitted. I ruled against that.

2 MR. KERR: Your Honor, just so I -- this is Charles  
3 Kerr. Our proposed redactions of Mr. Fazio's testimony I gave  
4 to both the committee, I gave to Mr. O'Neill, not to Mr.  
5 Horowitz, but Mr. O'Neill, Mr. Kaufman and to Mr. Perry last  
6 Wednesday morning. Our proposed redactions haven't been  
7 changed.

8 THE COURT: Fine. Let me have it.

9 MR. HOROWITZ: And we did see those, yes.

10 THE COURT: Okay.

11 MR. HOROWITZ: And we concur with those, just for the  
12 record.

13 THE COURT: All right. So you used the same color  
14 highlighting as Mr. Perry did.

15 MR. KERR: I would like to say he used the same color  
16 as I used.

17 THE COURT: All right. Let me just --

18 I'm just putting at the top of mine "redactions  
19 proposed by proponents". And let's have Mr. Fazio come up and  
20 be sworn.

21 If you would raise your right hand, Mr. Fazio, and be  
22 sworn.

23 (Witness sworn)

24 THE COURT: Please have a seat. Thank you very much.

25 Mr. Perry, are you offering exhibits in connection

1 with Mr. Fazio's testimony?

2 MR. PERRY: We are not, Your Honor.

3 THE COURT: Okay.

4 Mr. Kerr, cross-examination.

5 CROSS-EXAMINATION

6 BY MR. KERR:

7 Q. Good morning, Mr. Fazio.

8 A. Good morning.

9 Q. You are a managing director in the financial restructuring  
10 group of Houlihan Lokey Capital, Inc., correct?

11 A. Correct.

12 Q. And Houlihan Lokey is the financial advisor for the ad hoc  
13 group of junior secured noteholders, correct?

14 A. Correct.

15 Q. And Houlihan has had that role since before the petition  
16 was filed in these cases in May of 2012, correct?

17 A. Correct.

18 MR. KERR: Your Honor, may I just -- I realize I need  
19 to pass up a binder, if I can.

20 THE COURT: Sure. Thank you.

21 Q. Mr. Fazio, we've just handed up to you a binder. In that  
22 binder I think you'll find there is a copy of your direct  
23 testimony of Michael Fazio, which was docket number 5711 in  
24 unredacted form, as well as the deposition and I think a couple  
25 other documents.

1 Let's turn to your direct testimony, which was filed as  
2 docket number 5711, Mr. Fazio. Before filing that direct  
3 testimony, you prepared an expert report of Michael Fazio-  
4 recovery analysis dated October 18, 2013, correct?

5 A. Yes.

6 Q. And that's attached as Exhibit A to your direct testimony?

7 A. Yes, it is.

8 Q. And you also prepared a rebuttal report to the expert  
9 report of Mark A Renzi, dated November 1st, 2013, correct?

10 A. Correct.

11 Q. And that's attached as Exhibit B to your direct testimony?

12 A. Yes.

13 Q. And your witness statement, which is the first seventeen  
14 pages of your direct testimony, summarizes key points in your  
15 two expert reports, correct?

16 A. It summarizes my reports.

17 Q. And your witness statement along with your attached expert  
18 reports constitute your direct testimony that are being offered  
19 in this matter, correct?

20 A. Yes.

21 Q. Okay. Now prior to preparing your direct testimony, Mr.  
22 Fazio, you never spoke to Barb Westman, did you?

23 A. No, did I not.

24 Q. And prior to preparing your direct testimony here you  
25 never spoke to Cathy Dondzila, did you?

1 A. I don't believe so.

2 Q. And prior to preparing your direct testimony here, you do  
3 not recall speaking to Tammy Hamzehpour, isn't that correct?

4 A. That's correct.

5 Q. Okay. So let's turn to the work you did in connection  
6 with your first expert report, the October 18th, 2013 report.

7 For purposes of your October 18th, 2000 report, Mr. Fazio,  
8 you were asked to provide sensitivity outputs on the debtors'  
9 collateral scenario recoveries to estimate the impact of  
10 certain issues subject to phase 2 of the adversary proceeding,  
11 correct?

12 A. Correct.

13 Q. And that is what you describe in the first sentence of  
14 paragraph 6 of your direct testimony, which is on page 3,  
15 correct?

16 A. That's correct.

17 Q. Okay. And as a general matter, the assumptions that you  
18 utilized in the debtors' collateral scenario are intended to be  
19 consistent with those utilized by the debtors in there  
20 disclosure statement and any updates thereto, correct?

21 A. Yes, so we can isolate any differences just for the  
22 changes in the assumptions.

23 Q. And to do the analysis that you did, you used a waterfall  
24 model developed by Houlihan, correct?

25 A. That's correct.

1 Q. And that is a mathematical tool that models the recovery  
2 of different claimants based on different assumptions, correct?

3 A. That's correct.

4 Q. And it calculates the ultimate recoveries to the different  
5 claimants based on the various assumptions that are being made,  
6 correct?

7 A. That's correct.

8 Q. And for your first report, you used the debtors' April  
9 30th, 2013 trial balances containing the book value of assets  
10 at each debtor, correct?

11 A. That was one of the things utilized, yes.

12 Q. And the assumptions you utilized in the debtors'  
13 collateral scenario --

14 MR. KERR: Strike that.

15 Q. The assumptions that you utilized in the debtors'  
16 collateral scenario would also include the allocation of  
17 administrative claims that were used by the debtors in the  
18 disclosure statement, correct?

19 A. That's correct.

20 Q. And you also used the amount and allocations of allowed  
21 claims for general unsecured creditors that were in the  
22 disclosure statement for all of your scenarios, correct?

23 A. Yes, we used that, that's correct.

24 Q. And you are providing no opinion as to the merits or  
25 validity of those assumptions, correct?



1 A. That's correct. That's what this is about; this hearing.

2 Q. And what you did was to use your waterfall model to test  
3 several scenarios by changing one or more of the debtors'  
4 assumptions in isolation in order to determine the impact that  
5 those changed assumptions have on the JSNs' collateral value,  
6 correct?

7 A. That's correct.

8 Q. Let's turn, Mr. Fazio, to the analysis you did with  
9 respect to the intercompany balances.

10 Now one of the scenarios you did was to use the debtors'  
11 collateral scenario assumptions, but include all pre-petition  
12 intercompany claims as if they were valid, in the amount shown  
13 on the debtors' statement of assets and liabilities, correct?

14 A. That's correct.

15 Q. And that was scenario A that you describe in paragraph 18A  
16 of your direct testimony, correct?

17 A. I have to get to 18A. I'm sorry.

18 Q. It's on page 7 of your direct.

19 A. Okay. Yes, that's correct.

20 Q. And for purposes of this analysis, you just assumed that  
21 the JSNs have a lien on those intercompany balances, correct?

22 A. That was the assumption, that's correct.

23 Q. And you're not offering an opinion that the JSNs do, in  
24 fact, have a lien on any of those intercompany balances?

25 A. Nope, I'm not making a legal determination.

1 Q. And the results of scenario A, this analysis, is shown in  
2 the chart in paragraph 19 of your direct testimony under the  
3 column listed A -- that's at page 8 of your direct testimony --  
4 isn't that correct?

5 A. That's correct.

6 Q. Now, sir, you are not offering any opinion that as of the  
7 petition date the intercompany balances, in fact, had a value  
8 equal to the face value shown on the debtors' statement of  
9 assets and liabilities, are you?

10 A. No. The value that's being opined here is the recovery --  
11 the secured recovery value, if you plug in the intercompanies  
12 as scheduled and as the amounts shown.

13 Q. But my question is a little more specific than that.

14 You're not offering any opinion, sir, that as of the  
15 petition date the intercompany balances, in fact, had a value  
16 equal to the face value as shown on the statement of assets and  
17 liabilities, correct?

18 A. That's correct. I'm going through and showing the face  
19 value and how that impacts and then running it through the  
20 waterfall to come up with a valuation.

21 Q. Sir, in your experience, is every debt collectable at its  
22 face amount?

23 A. No.

24 Q. Okay. Now, sir, you assumed that the intercompany claims  
25 as reflected on the statement and assets of liability were

1 based on the books and records of the company, correct?

2 A. That's correct.

3 Q. And you did not do any independent investigation what  
4 those intercompany balances were based upon or where they were  
5 derived from, correct?

6 A. They were derived from the books and records, as I  
7 understand it. But I didn't do an investigation to determine  
8 that. Other people did.

9 Q. Okay. And you did not do any investigation to determine  
10 where individual intercompany balances were derived from as  
11 reflected in the books and records, correct?

12 A. No, I did not.

13 Q. Okay. And you're not offering an opinion, sir, that the  
14 intercompany claims reflected on the debtors' books and records  
15 are valid, correct?

16 A. That's correct.

17 Q. And you're not offering any opinion that the intercompany  
18 balances as shown on the books and records are enforceable,  
19 correct, sir?

20 A. That's correct. That's a legal determination.

21 Q. And you're not offering any opinion about the value of the  
22 individual intercompany balances as of the petition date,  
23 correct, sir?

24 A. That's correct. I'm taking them as scheduled and at the  
25 amounts shown.

1 Q. And when you ran your scenario A, you assumed that the  
2 intercompany claims were valid as scheduled, but you did not  
3 change any of the other assumptions that were built into the  
4 waterfall model, correct?

5 A. That's correct. In scenario A.

6 Q. And you did not change the assumption used in the  
7 disclosure statement about the amounts and the allocation of  
8 the other general unsecured claims in your scenario A, correct?

9 A. That's correct.

10 Q. And in fact, in scenario A you assumed that if you allow  
11 for the intercompany claims to be treated as valid, that none  
12 of the other general unsecured creditors would change their  
13 position about the amounts they should be receiving for their  
14 claims, isn't that correct?

15 A. I am taking it, as I've said, keeping the constants  
16 associated with the claimants' amounts shown in the disclosure  
17 statement.

18 Q. And sir, you're familiar with the global statement that is  
19 referred to in the disclosure statement, correct?

20 A. I am familiar with it.

21 Q. And you agree, sir, that scenario A, as described in your  
22 direct testimony, is not consistent with the assumptions made  
23 in the global settlement, correct?

24 A. That's correct, because the global settlement does not  
25 include the intercompanies as a valid claim. That's what we're

1 here for.

2 Q. And in running scenario A, you did not take into  
3 consideration that certain of the intercompany balances had  
4 been identified by the debtors to be forgiven and treated as an  
5 equity infusion, did you, sir?

6 A. I did not do a hypothetical, as if intercompanies were  
7 forgiven. I understand they were not forgiven and that's what  
8 this is based off of.

9 Q. And you just assumed that if you treated the intercompany  
10 balances as valid and at face value, that would not change the  
11 amount and allocations of allowed claims for other general  
12 unsecured creditors, correct?

13 A. No. I've used what's scheduled, as I've told you.

14 Q. Okay. Now, Mr. Fazio, you were here, you know we're going  
15 to have some issues about other aspects of your report, but let  
16 me ask you a few questions about that.

17 You also ran a scenario B and C as part of this analysis,  
18 correct?

19 A. That's correct.

20 Q. And with those scenarios, you assumed that the JSNs have a  
21 direct lien on a certain portion of the contemplated 2.1-  
22 billion-dollar AFI contribution, correct?

23 A. That's one of the assumptions we modeled in scenario B,  
24 correct.

25 Q. Okay. And the amounts that you assume for purposes of

1 this analysis are set forth in paragraph 18B of your direct  
2 testimony, correct?

3 A. That is correct.

4 Q. And those amounts are based on the value set forth in  
5 Judge Lyons' expert opinion, correct?

6 A. Those amounts, yes.

7 Q. And that is the expert opinion that's now been excluded by  
8 the Court, correct?

9 A. I think the direct amounts have been excluded. However,  
10 I've also run, as you know, a scenario where you range it from  
11 anywhere between 200 and 1.2 billion.

12 Q. Sir, for purposes of your October 18th, 2013 report and  
13 your November 12th, 2013 direct testimony filed as document  
14 number 5711, these were the only amounts that you used for  
15 these scenario B and C, what's reflected in paragraph 18B,  
16 isn't that correct?

17 A. That is the assumption that was run, as if it was 1.2  
18 billion, approximately.

19 Q. Okay. And in your October 18th, 2013 report and in your  
20 November 12th, 2013 direct testimony, as filed on November  
21 12th, you did not show the results under scenario B or scenario  
22 C using any different figures for the amount of the AFI  
23 contribution that the JSNs would have a lien on, correct?

24 A. It's a mathematical model. I can run it on many different  
25 scenarios. This was the one what was run at the time.

1 THE COURT: Mr. Fazio, listen to the question that's  
2 asked. Answer the question. If Mr. Perry wants a longer  
3 explanation, he'll ask you for it.

4 THE WITNESS: Okay.

5 Q. Let me ask my question again, Mr. Fazio. In your October  
6 18th, 2013 report and in your November 12th, 2013 direct  
7 testimony as filed on November 12th, 2013, you did not show the  
8 results under scenario B or scenario C using different figures  
9 for the amount of the AFI contribution that the JSNs would have  
10 a lien on, correct?

11 A. That's correct.

12 Q. Okay. And you were not involved in the mediation before  
13 Judge Peck in the ResCap cases, were you?

14 A. I was not.

15 Q. And you're not offering an opinion that any of the claims  
16 that you reference in paragraph 18B of your direct testimony  
17 are valid enforceable claims against AFI, correct?

18 A. That is correct.

19 Q. And you're not offering an opinion as to the value of any  
20 of those claims, correct?

21 A. I am opining on the value. If you run the 1.2 billion  
22 dollars through the model, I am saying the recovery value is  
23 the opinion that I'm showing here, and in total, as you see on  
24 B, is 3.1 billion dollars.

25 MR. KERR: Your Honor, I'm continue.

1 THE COURT: Go ahead. No, if you want to move to  
2 strike --

3 MR. KERR: I'll move to strike that, Your Honor.

4 THE COURT: The testimony is stricken.

5 Mr. Fazio, I think we had this problem when you were  
6 here testifying during phase 1. You need to listen to Mr.  
7 Kerr's questions. You need to answer his questions. If you  
8 can answer them yes or no, please do. If you can't, tell me  
9 that you can't. If Mr. Perry wishes to examine you further, he  
10 has an opportunity to do that. Do you understand?

11 THE WITNESS: Yes, Your Honor, but he asked me a  
12 specific question.

13 THE COURT: Let's ask your next question.

14 THE WITNESS: Okay.

15 Q. My next question, Mr. Fazio: in fact you're not offering  
16 an opinion here today about the value of any claims that the  
17 debtors allegedly have against AFI, correct, sir?

18 A. That's incorrect.

19 Q. Okay. Mr. Fazio, do you recall being deposed in this case  
20 in connection with this confirmation hearing?

21 A. Yes, I do.

22 Q. And you came to my office -- actually I came to your  
23 office and we had a deposition?

24 THE COURT: You can skip the preliminaries.

25 MR. KERR: Okay.



1 Q. If you would turn in your binder to your deposition page  
2 81, line 14 and you were asked -- are you there, Mr. Fazio?

3 A. Not yet. Page 81, line 14, yes.

4 Q. And you were asked this question and gave this answer:

5 "Okay. And I believe you've already testified, Mr. Fazio,  
6 that you're not offering an opinion about the value of any of  
7 the specific claims the debtors allegedly have against AFI,  
8 correct?

9 "A. That is correct."

10 Were you asked that question and did you give that answer?

11 A. I did give that answer, yes.

12 Q. Okay. So let's turn in your October 18th report, sir,  
13 to -- you did a separate analysis in which you assum that the  
14 RMBS trust claims and the monoline claims are subordinated to  
15 other unsecured claims, correct?

16 A. That's correct.

17 Q. And that is described in paragraph 25 of your direct  
18 testimony on page 10, isn't that correct?

19 A. That is correct.

20 Q. You would agree, sir, that the assumption that the RMBS  
21 trust claims and the monoline claims are subordinated to the  
22 other general unsecured creditors is not consistent with the  
23 assumptions made as part of the global settlement, correct?

24 A. That's correct.

25 Q. And you would agree that the RMBS trust claims and the

1 monoline claims are a large percentage of the overall general  
2 unsecured claims, correct?

3 A. That's correct.

4 Q. In fact, you told me they were over eighty-five percent of  
5 the general unsecured claims, correct?

6 A. That's correct.

7 Q. So let's turn to your -- actually a slide in your October  
8 18th, 2013 expert report, which is Exhibit A to your direct  
9 testimony. It'll just the bottom say slide 13.

10 A. Yes, sir.

11 Q. Now under scenario A of the analysis as shown on this  
12 slide 13, you are assuming that the intercompany balances are  
13 deemed to be valid, and you are assuming that the RMBS trust  
14 claims and the monoline claims are subordinated, but that all  
15 of the other assumptions in the debtors' collateral scenario  
16 remain the same, correct?

17 A. Other than the intercompany being turned on, that's  
18 correct.

19 Q. And you're not offering an opinion here today of whether  
20 that outcome would ever occur, are you, sir?

21 A. No, I'm not making any legal determinations here.

22 Q. Okay. Now, you also ran a separate analysis as part of  
23 your October 18th, 2013 report under which you attempted to  
24 assess the impact of reinstating intercompany claims forgiven  
25 by the debtors between 2008 and the petition date, correct,

1 sir?

2 A. That's correct.

3 Q. And these previously forgiven intercompany claims total  
4 16.6 billion dollars over the period from 2008 to the petition  
5 date, correct?

6 A. That's correct.

7 Q. And if you avoid that 16.6 billion dollars in previously  
8 intercompany claim forgiveness, some of that reduces the  
9 secured recovery of the JSNs, correct?

10 A. Correct, some reduce, some increase, as I've stated in  
11 there.

12 Q. And one of the ways that can happen is that there is a  
13 reinstatement of intercompany claims between the same legal  
14 entities that have intercompany claims existing in the petition  
15 date, but in the opposite lending direction, isn't that  
16 correct?

17 A. That's correct, if you assume that you're netting, yeah,  
18 it's correct.

19 Q. Now of the 16.6 billion dollars of previous debt  
20 forgiveness, you indicate that 9.1 billion of that amount are  
21 between entities in the waterfall model, correct?

22 A. That is correct.

23 Q. And you indicate that 6.5 billion of previously forgiven  
24 intercompany claims are between legal entities that have no  
25 existing intercompany claim in the opposite direction, correct?

1 A. That's correct.

2 Q. And what this means, that if you avoid the 6.5 billion of  
3 previously forgiven intercompany claims, your model shows that  
4 this would increase claim value to the JSNs, as the JSNs, as  
5 you indicate, would have a direct lien on certain of the  
6 receivables and an indirect benefit from others through equity  
7 pledges, is that correct?

8 A. That's correct.

9 Q. But this is only true, sir, if you assume that the JSNs  
10 continue to have a lien on any increase to the intercompany  
11 balances as a result of those avoidance actions?

12 THE COURT: Let me hear that one again, Mr. Kerr,  
13 sorry.

14 Q. But this is only true if you assume that the JSNs continue  
15 to have a lien on any increase to the intercompany balances as  
16 a result of those avoidance actions, correct, sir?

17 A. I believe that's correct. I would have to actually get a  
18 legal determination if they would be due, if they didn't have a  
19 direct lien. But --

20 Q. Okay. Now, sir, in your October 18th, 2013 report, you  
21 also commented on the debtors' liquidation analysis, correct?

22 A. That's correct.

23 Q. And in paragraph 29 of your direct testimony, which is on  
24 page 12 of your direct, you say that the debtors' liquidation  
25 analysis is misleading for several reasons, correct?

1 A. I don't know if it's on this page, but yes, I remember  
2 that.

3 Q. Well, if you could just read to yourself paragraph 29 of  
4 your direct testimony?

5 A. I do say it on paragraph 29, correct.

6 Q. Okay. And the liquidation analysis that you are referring  
7 to is the liquidation analysis that was part of the disclosure  
8 statement, correct?

9 A. That's correct.

10 Q. And one of the reasons that you suggest that the  
11 liquidation analysis is misleading is because it ascribes zero  
12 value to any potential claims the debtors might have against  
13 AFI in a liquidation scenario, correct?

14 A. Say that again, sorry?

15 Q. One of the reasons that you suggest that the liquidation  
16 analysis is misleading is because it ascribes zero value to any  
17 potential claims that the debtors might have against AFI in a  
18 liquidation scenario, correct?

19 A. That's correct.

20 Q. But when you read the liquidation analysis, you understood  
21 that it ascribed zero value to the alleged claims against AFI,  
22 correct?

23 A. I did, that's correct.

24 Q. Therefore, you, Mr. Fazio, were not misled by what was in  
25 the liquidation analysis on that point, correct?

1 A. I'm an educated reader of it, so I was not mislead; I went  
2 through it in fine detail, correct.

3 Q. And another reason why you suggest that the liquidation  
4 analysis is misleading is because it ascribes zero value to the  
5 intercompany claims, correct?

6 A. That's correct.

7 Q. And when you read the liquidation analysis, Mr. Fazio, you  
8 understood that it ascribed zero value to the intercompany  
9 claims, correct?

10 A. That's correct.

11 Q. Therefore, you were not misled by the liquidation analysis  
12 on that point, were you, sir?

13 A. I'm not. I'm an educated reader with a model that  
14 actually can see the impact of that, that's correct.

15 Q. Mr. Fazio, let's return, if we can, to your November 1st,  
16 2013 rebuttal report, which was attached as Exhibit B to your  
17 direct testimony.

18 This was a report that you prepared in rebuttal to Mr.  
19 Renzi's October 18th, 2013 expert report submitted in this  
20 case, correct?

21 A. That's correct.

22 Q. In this rebuttal report, you were asked to do sensitivity  
23 outputs on the JSNs' projected recoveries under the  
24 hypothetical liquidation analysis included in annex B to Mr.  
25 Renzi's October 18th, 2013 report, correct?

1 A. I don't know if it's annex B, but that's correct.

2 Q. And you used the same waterfall model that you've used  
3 previously, but you adjusted for the assumptions underlying the  
4 debtors' liquidation analysis, correct?

5 A. That's correct.

6 Q. And you're not providing any opinion on the merits or  
7 validity of those assumptions, correct, sir?

8 A. Not in this testimony. I think I did before in phase 1.

9 Q. Sir, here today you're not providing any opinion on the  
10 merits or validity of those assumptions, correct?

11 A. Not as part of phase 2. Phase 1 I did, I said.

12 Q. And what you do as part of this analysis is to run  
13 hypothetical AFI contributions through this model to see the  
14 impact on the JSNs' recovery, correct?

15 A. That's one of the assumptions changed, correct.

16 Q. And under this liquidation analysis assumptions --

17 MR. KERR: strike that.

18 Q. Under your liquidation analysis assumptions that you  
19 describe in your report, there is no third-party release being  
20 provided by AFI, correct?

21 A. Say that one more time, I'm sorry?

22 Q. Under these liquidation assumptions, there is no third-  
23 party release being provided by AFI, correct?

24 A. Under the scenario -- say it one more time, I apologize.

25 Q. Let me back up.

1 A. Yep.

2 Q. In the liquidation scenario --

3 A. Um-hum.

4 Q. -- there is assumed to be no AFI, no third-party releases  
5 being provided by AFI, correct?

6 A. That's correct.

7 Q. And when you run your analysis using the liquidation  
8 scenarios, you don't change that assumption, right?

9 A. That's correct.

10 Q. Okay. So let me ask the question again.

11 Under this liquidation analysis assumptions, there is no  
12 third-party release being provided to AFI, correct?

13 A. As I understand it, the third-party release in a  
14 liquidation analysis will survive a liquidation. So the JSNs  
15 will have rights of privity to go after AFI.

16 Q. Okay. And you offer no opinion as to how long it will  
17 take to obtain any of the recoveries from AFI, correct?

18 A. That's correct.

19 Q. You offer no opinion as to how much it will cost to obtain  
20 those net recoveries from AFI, correct?

21 A. That's correct.

22 Q. Okay. If we could look at paragraph 38 of your direct  
23 testimony? And in this paragraph, sir, you republish a chart  
24 that is at the bottom of slide 6 of your expert rebuttal  
25 report, correct?



1 A. I know it's in my -- I didn't cross-references to see  
2 exact pages, but I assume that's correct, if you've gone  
3 through it.

4 Q. Okay. And , sir, in the column -- in two columns entitled  
5 secured recovery, low and high you show the amount of secured  
6 recovery the JSNs could get under the scenario you have run,  
7 correct?

8 A. That's correct.

9 Q. And with respect to the scenario A, which is described in  
10 paragraph 38, under none of the examples that you have run does  
11 the JSNs secured recovery exceed 2.223 billion dollars,  
12 correct?

13 A. Under those assumptions that are detailed in my report,  
14 that's correct.

15 Q. Okay. If you turn down to paragraph 39 of your direct  
16 testimony, in that paragraph you republish a slide (sic) from  
17 slide 7 of your rebuttal report, correct?

18 A. I'd have to go between the two, but it is a republished --  
19 I don't know what slide number it is offhand. But --

20 Q. Well, if you look at the first line of paragraph 39, does  
21 that assist you, sir?

22 A. Yes, it says slide 7 on my rebuttal report.

23 Q. Okay. Under this scenario B, would you agree with me,  
24 sir, that if the amount of any net Ally contribution is 1.25  
25 billion dollars, the amount of the secured recovery either --

1 under either the low or high scenario is still below 2.223  
2 billion dollars?

3 A. Under these assumptions, that's correct.

4 Q. Now in running these scenarios as outlined here, sir, you  
5 assume that even though --

6 MR. KERR: Strike that.

7 Q. In running these scenarios, this A and B in paragraphs 38  
8 and 39 of your direct testimony, you assume that the  
9 intercompany claims are valid as scheduled, but that none of  
10 the other claims of the general unsecured creditors would  
11 change in value, correct?

12 A. They wouldn't change in amount.

13 Q. They would not change in amount?

14 A. That's correct.

15 Q. Okay. Sir, if you could turn to paragraph 41 of your  
16 direct testimony, sir, can you tell me where in your rebuttal  
17 report you describe what counsel had instructed you to do as  
18 you say in paragraph 41? I could not find it in your rebuttal  
19 report.

20 A. If you look at page 20 of Exhibit A, slide 20, where it  
21 goes through what counsel has informed me, that the claims  
22 against AFI will survive a liquidation and therefore it is  
23 inappropriate to ascribe zero value to such claims.

24 Q. So that is where you turned to when you believe you  
25 previously describe what is in paragraph 41 of your direct

1 testimony?

2 A. Yes.

3 Q. Mr. Fazio, if the JSNs receive the total amount of their  
4 allowed claim, plus any post-petition interest and expenses  
5 that they are due, if they can establish that they are owed  
6 those amounts, you would agree that the JSNs would not be  
7 harmed by the partial consolidation that's contemplated under  
8 the plan, correct?

9 A. That's correct, if they receive all post petition interest  
10 and expenses, that's correct.

11 MR. KERR: I have no further questions, Your Honor.

12 THE COURT: All right. I'm prepared to rule on the  
13 issue of the redactions. So --

14 MR. KERR: Your Honor, can I just get my copy?

15 THE COURT: Yes. So what I'm going to do is compare  
16 the two. I've got in front of me Mr. Perry's redacted version,  
17 and I've compared that against Mr. Kerr's redacted version.

18 MR. KERR: Let me just -- Your Honor, give me one  
19 second --

20 THE COURT: Yeah, go ahead.

21 MR. KERR: -- to get myself organized here. Okay.

22 THE COURT: Paragraph 6 on page 3, the additional  
23 proposed redaction by the proponents, the objection is  
24 overruled.

25 Going to page 7, in paragraph 18B, the additional

1 proposed redaction is the first sentence under B, "AFI  
2 contribution utilizes the debtors' collateral scenario  
3 assumptions, but assume the JSNs have a direct lien on certain  
4 components of the contemplated 2.1 billion AFI contribution."  
5 I'll stop it there. The remaining portion of paragraph B is  
6 included in Mr. Perry's redaction. So the language that I  
7 quoted, the first clause of 18B, the objection is overruled.

8 In paragraph 18C, the objection is overruled.

9 Next on page 9, paragraph 21 and paragraph 22 --

10 MR. KERR: Your Honor, if I may, just to make sure  
11 you're clear, we had also in paragraph 19 highlighted the two  
12 columns.

13 THE COURT: Oh, oh, oh. I missed that. Okay, sorry.  
14 Give me a second. I apologize, Mr. Kerr.

15 The objection to columns B and C in slide 19, the  
16 objection is sustained.

17 Paragraphs 21 and 22, the objection is sustained.

18 Paragraph 23, the reference to, in the second line, "B  
19 and C against", the objection is sustained.

20 In paragraph 24, the first line, reference to B and C,  
21 the objection is sustained.

22 Paragraph 25, in the third line, the reference to B  
23 and C, and then in the -- beginning in the sixth line the  
24 sentence, "There is no effect on scenario B because scenario B  
25 derived increased value only from a portion of the AFI

1 contribution and not the intercompany claims which are general  
2 unsecured claims that would recover pari passu, with the RMBS  
3 trust and monolines claims absent subordination of those claims  
4 and scenario C the increased recovery value of intercompany  
5 claims increases the JSNs' total secured recovery to 4.609  
6 billion," and then in the next sentence the reference to B and  
7 C, those objections are sustained; all of those objections that  
8 the proponents have made to paragraph 25, the objection is  
9 sustained.

10 In paragraph 28, the proponents' objection beginning  
11 the third line "receive no secured recovery from the AFI  
12 contribution, and the committee fully prevails on its  
13 challenges to the scope and amount of the JSNs collateral," the  
14 objection is sustained.

15 Paragraph 30, the objection is sustained.

16 That's it, isn't it, Mr. Kerr?

17 MR. KERR: Well, Your Honor, because Mr. Fazio  
18 incorporated Exhibit A and made it part of his direct  
19 testimony, we also had identified places in Exhibit A.

20 THE COURT: Okay, let me look at that.

21 MR. KERR: The first is slide 4, Your Honor.

22 THE COURT: Yes. The objection on slide 4, the  
23 objections are sustained.

24 Objection on slide 6, sustained.

25 Mr. Perry, you have the copy, I don't have to quote

1 the language on the record, do you agree with that?

2 MR. PERRY: Yes, Your Honor.

3 THE COURT: Okay. On slide 11, the objection is  
4 sustained.

5 Slide 12, the objections are sustained.

6 Slide 13, the objections are sustained.

7 Is there anything in the appendices, Mr. --

8 MR. KERR: No, Your Honor, that's it.

9 THE COURT: All right. And in the rebuttal report,  
10 are there?

11 MR. KERR: No, nothing in there, Your Honor.

12 THE COURT: Okay. Now, with the Court having ruled on  
13 the further objections, do you wish to cross-examine any  
14 further, Mr. Kerr?

15 MR. KERR: No, I'm all done.

16 THE COURT: Mr. Horowitz, are you going to cross-  
17 examine?

18 MR. HOROWITZ: I am, Your Honor. Fairly briefly, Your  
19 Honor.

20 THE COURT: Okay.

21 MR. HOROWITZ: For the record, Greg Horowitz, from  
22 Kramer Levin, on behalf of the committee.

23 CROSS-EXAMINATION

24 BY MR. HOROWITZ:

25 Q. Good morning, Mr. Fazio.

1 A. Good morning.

2 Q. Now, Mr. Fazio, you're not offering any opinion in phase 2  
3 about the value of any adequate protection claims, right?

4 A. I'm valuing the scenarios that have been put forth.  
5 Whether or not that allows the JSNs to be adequately protected  
6 or not is a legal determination.

7 Q. Well, let me ask you to turn to your deposition. You've  
8 still got that tab there. And let me refer you to page 29 of  
9 your deposition. Tell me when you're there.

10 A. Page 29, yes.

11 Q. Yes. And I'm referring you to line 13, do you see where  
12 Mr. Kerr asked you the following question and you gave the  
13 following answer.

14 "Q. Okay. You're not providing an opinion here in the value  
15 of any adequate protection claims, is that correct?

16 "A. Not in this report. As I said, I did some reports in  
17 phase 1."

18 That's accurate, right?

19 A. I'd have to read this whole thing. I mean you're pointing  
20 out something in isolation and it does not say anything about  
21 the word --

22 THE COURT: Take your time to read what you want.

23 THE WITNESS: Okay.

24 MR. HOROWITZ: Sure.

25 (Pause)

1 A. Yes, I see that.

2 Q. Okay. And I take it that when you hedged before, your  
3 concern was that you feel like some of the opinion that you're  
4 offering here might have some bearing on adequate protection  
5 claims, is that fair?

6 A. That's fair.

7 Q. Okay. Well, let's talk about that.

8 You are not in your reports or your direct testimony here  
9 offering any opinion as to the value of any putative  
10 intercompany claims as of the petition date, right?

11 A. The petition date would be phase 1, yeah.

12 Q. Okay.

13 A. The --

14 A. And in your direct testimony and in your reports, neither  
15 of the reports that you've submitted here, did you make any  
16 effort to ascribe any value to intercompany claims as of the  
17 petition date, correct?

18 A. The intercompany balances being used here are as of the  
19 petition date. So, therefore, the value that's being run  
20 through the waterfall could be said to be the value of the  
21 intercompanies as of the petition date, because that's the  
22 referenced balance that the intercompanies we're using here.

23 Q. Well, in your waterfall you treat intercompany claims as  
24 unsecured claims, correct?

25 A. No. In some of the models here we're saying that there is



1 a direct lien on the intercompany.

2 Q. And the value of the intercompany claim itself is based on  
3 what an intercompany claim would be worth as an unsecured claim  
4 against the obligor on that intercompany claim?

5 A. That's correct.

6 Q. You follow me now?

7 A. Yes. Yep.

8 Q. Okay. And the value of an intercompany claim, a putative  
9 intercompany claim, therefore, is a function, among other  
10 things, of the assets that are available at the obligor company  
11 to satisfy unsecured claims, correct?

12 A. That's correct.

13 Q. All right. So you need, in order to determine the value  
14 of the intercompany claim, to come to some conclusion as to  
15 what assets are available at the obligor, correct?

16 A. That's correct.

17 Q. And you need to come to a conclusion as to the value of  
18 those assets, right?

19 A. That's correct.

20 Q. And the value of those assets may change over time, right?

21 A. That's correct.

22 Q. And here what you did is you used the values shown on the  
23 company's April 30th, 2013 trial balances, right?

24 A. That's correct.

25 Q. And the debtors' estimates of the recovery values in the

1 disclosure statement, right?

2 A. That's correct.

3 Q. Okay. You did not use any estimate of the value of assets  
4 as of the petition date, right?

5 A. That's correct, in this analysis. But as I pointed out  
6 what all the assumptions were, you can run it, since it's a  
7 mathematical model, based on any of the assumptions that you  
8 wanted to vary those.

9 Q. Well, in order to run it, you would need to have some  
10 information about what the value of assets was on the petition  
11 date, right?

12 A. That's correct.

13 Q. Okay. And you did not do that, right?

14 A. Not in this analysis, correct.

15 Q. Okay. And if asset values increased between the petition  
16 date and the estimated effective date, then the value of  
17 intercompany claims would also increase, right?

18 A. Mathematically, yes.

19 Q. Okay. But nothing in your analysis quantifies that  
20 impact, right?

21 A. That's correct.

22 Q. Okay. And it, therefore, follows, doesn't it, that  
23 nothing in your analysis shows whether the value of putative  
24 intercompany claims diminished between the petition date and  
25 the effective date, right?

1 A. It could have increased or decreased. We could have one  
2 different scenarios if you wanted through the model. But  
3 nothing here is stressing that value, that's correct. We used,  
4 as I've said, the disclosure statement values as a baseline for  
5 the report.

6 Q. Okay. By the way, also nothing in your opinion offers an  
7 opinion as to the aggregate value of the junior secured note  
8 holders' collateral as of the petition date, right? And by  
9 aggregate value, I mean including the putative intercompany  
10 claims.

11 A. I'm not sure. We -- it depends on what assumptions you  
12 want to run. If you say that they have a direct lien on the  
13 AFI contribution, if you say that the intercompanies are valid  
14 as scheduled, then we do come up with a valuation of the total  
15 secured recovery associated with the JSNs' collateral.

16 Q. To be clear, my question was as of the petition date.

17 Nothing in your report attempts to quantify the aggregate  
18 value of JSN collateral as of the petition date, correct?

19 A. I'm not sure technically if it's correct. If the  
20 assumption is that the collateral value is the 1.88 billion as  
21 of the petition date, that's could to be an assumption that you  
22 run through.

23 We're using a baseline of the disclosure statement, but if  
24 an assumption was said to make the value associated with the  
25 disclosure statement effective as of the petition date, that

1 could be an assumption that's run at the 1.88 billion.

2 Q. Sir, you did not, in your report, make an assumption that  
3 the 1.88 billion base collateral as of the effective date was  
4 actually the value of JSN collateral as of the petition date,  
5 did you?

6 A. We just assumed the baseline that was in the debtors'  
7 analysis as I've stated.

8 Q. Sir, is there anything in your report that makes any  
9 assumption as to the value of the JSN collateral as of the  
10 petition date?

11 A. Nothing over and above what I've just said.

12 Q. Now also, sir, to be clear, the waterfall model that you  
13 use assumes the receipt of -- in addition to using the April  
14 30th, 2013 trial balances, right?

15 A. Correct.

16 Q. It also assumes that the debtors have received the 2.1-  
17 billion-dollar AFI contribution, correct?

18 A. That's correct.

19 Q. So when you value your intercompany -- the putative  
20 intercompany claims, part of the assets available for  
21 distribution is the 2.1-billion-dollar AFI contribution,  
22 correct?

23 A. That's correct.

24 Q. Now that 2.1-billion-dollar AFI contribution was not  
25 available for distribution on intercompany claims as of the

1 petition date, correct?

2 A. I do not believe the settlement what was done on the  
3 petition date, correct.

4 Q. Right. And, in fact, the 2.1 billion isn't even in the  
5 hands of the debtors as we sit here today, right? Or in my  
6 case, stand here.

7 A. I'm not sure where it stands.

8 Q. Okay. You're not familiar with the terms of the global  
9 settlement, sir?

10 A. I am, but I'm not sure if it's in escrow or where it is.  
11 I assume that it's not settled, because this case isn't  
12 settled.

13 Q. Okay. But your analysis assumes a point in time where  
14 both the intercompany balances are treated as valid enforceable  
15 claims and the AFI contribution has been received, correct?

16 A. That's correct, in the analysis.

17 Q. Okay. Now the waterfall model that you used, sir, in your  
18 direct testimony in paragraph 10 -- if you could turn to that.

19 A. Yes.

20 Q. Are you there? You say "To perform my analysis, I  
21 developed a waterfall model with the assistance of my team at  
22 Houlihan Lokey." Do you see that?

23 A. Yes, I do.

24 Q. Now, in fact, sir, it's true, is it not, that the  
25 waterfall model had been developed by Houlihan prior to the

1 petition date?

2 A. It was -- the beginning of the development was before, and  
3 then there it was subsequently tweaked along with my comments  
4 in there.

5 Q. Okay. You were not involved in this representation during  
6 the pre-petition period, correct?

7 A. That's correct.

8 Q. You didn't become involved until you got involved for  
9 purposes of providing expert reports for phase 1 and phase 2,  
10 correct?

11 A. That's correct.

12 Q. Okay. But by the time you got involved, Houlihan had  
13 already developed a fully functioning waterfall model, correct?

14 A. It was fully functioning, and as I said I've tweaked the  
15 model to ensure that I'm in conformity with all my desires for  
16 the modeling, correct.

17 Q. Okay. And it's fair to assume that in the course of your  
18 work you familiarized yourself with all of the facts and  
19 circumstances surrounding Houlihan's development of the model,  
20 right?

21 A. I'm not sure about all facts and circumstances. I'm  
22 familiar with the model, and I'm comfortable that the model is  
23 representative of a waterfall model in the scenario.

24 Q. And you were assisted by team members who had been  
25 involved in the development of the model during the pre-

1 petition period, right?

2 A. That's correct.

3 Q. Including Jeffrey Lewis?

4 A. Yes.

5 Q. And Ben Ilhardt?

6 A. That's correct.

7 Q. And those individuals have been involved in the  
8 representation during the entire period, right?

9 A. That's correct.

10 Q. And you relied on them to fill you in on whatever  
11 background information you deemed to be material, right?

12 A. I made all the questioning I thought I needed to, yes.

13 Q. Okay. And you were aware that prior to the petition date  
14 the Houlihan model had the ability to consider and run  
15 intercompany claims, right?

16 A. I'm not exactly sure when that functionality became  
17 present in the model.

18 Q. As you sit here today, do you have any reason to doubt  
19 that the pre-petition model had the functionality to value  
20 intercompany claims?

21 A. Like I said, I did not go through, and pre-petition time  
22 period of the model development was not of concern to me.

23 Q. Okay.

24 THE COURT: Did it when you first became involved?

25 THE WITNESS: It had it when I first became involved

1 as an expert, yes, Your Honor.

2 MR. HOROWITZ: Thank you, Your Honor.

3 Q. Let me ask you to take a look at the last tab in your  
4 book, which is Defendant's Exhibit BAM.

5 This is a pair of e-mails including the last one is an  
6 e-mail from Jeffrey Lewis to Mark Renzi. Do you see this?

7 A. I do see this.

8 Q. This is dated June 29th, 2012, and it's entitled "ResCap  
9 intercompany balances". Are you familiar with this e-mail,  
10 sir?

11 A. No, I'm not.

12 Q. Okay. Did Mr. Lewis -- by the way, do you see that the  
13 second e-mail on this page, the one that's being forwarded, is  
14 an e-mail from Mr. Ilhardt, right?

15 A. I do see that.

16 Q. With the same subject line, right?

17 A. Yes.

18 Q. So did Mr. Lewis and Mr. Ilhardt brief you in connection  
19 with your work on this matter about their work in seeking to  
20 understand the intercompany claims before and shortly after the  
21 petition date?

22 A. I think throughout the whole case they gave me their  
23 debrief of their intercompany balances throughout the whole  
24 case.

25 Q. So let me refer you to the first e-mail on this document,



1 the one from Mr. Lewis. And take a look at the second to last  
2 paragraph that says, "We know the schedules will be published  
3 this weekend." Do you see that?

4 A. Yes, I do.

5 Q. Now, first of all, by the way, just for context, June  
6 29th, 2012, that's about a month and a half after the petition  
7 date, right?

8 A. That's correct.

9 Q. And you understand that the schedules that are referred to  
10 in the sentences that I started reading are the schedules of  
11 assets and liabilities?

12 A. Yes, I believe so.

13 Q. Okay. And June 29th, 2012 is shortly after those  
14 schedules were filed, right?

15 A. That's June 28th, is shortly before, I think you said,  
16 right?

17 Q. I said June 29th, but --

18 A. Okay.

19 Q. -- yes.

20 So reading on on that sentence, "We know the schedules  
21 will be published this weekend, but since we have not seen  
22 them, we do not know how the intercompany claims will be  
23 described/detailed in the schedules. We anticipate we will  
24 start getting calls on the schedules starting on Monday. We  
25 would like to be able to say more than the company has

1 indicated the intercompany claims should be treated as equity  
2 contributions and not loans, but after weeks of asking and  
3 multiple requests we do not have their support for this  
4 assertion."

5 Do you see that sentence, sir?

6 A. Yes, I do.

7 Q. Okay. So did Mr. Lewis and Mr. Ilhardt advise you in  
8 connection with your work that before the schedules of assets  
9 and liabilities had been filed the debtors had actively been  
10 taking the position that intercompany claims should be treated  
11 as equity contributions and not loans?

12 A. I am not sure. I know there was discussion before or  
13 after, but I am not positive and did not go through this with  
14 them.

15 Q. Okay. But reading this here, you understand that Mr.  
16 Lewis was indicating that the company had been taking the  
17 position for weeks prior to the filing of the schedules of  
18 assets and liabilities that the intercompany claims should be  
19 treated as equity contributions and not as loans?

20 MR. PERRY: Objection.

21 THE COURT: Sustained.

22 MR. HOROWITZ: Thank you.

23 I have nothing further.

24 THE COURT: Thank you.

25 MR. HOROWITZ: Your Honor, I'd like to offer that last

1 document, Defendant's Exhibit BAM.

2 MR. PERRY: No objection.

3 THE COURT: All right. DX-BAM is admitted in  
4 evidence.

5 (E-mail chain was hereby received into evidence as Defendants'  
6 Exhibit DX-BAM, as of this date.)

7 THE COURT: Any further cross from anybody?

8 All right, Mr. Perry.

9 MR. PERRY: Brief redirect, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. PERRY:

12 Q. Mr. Fazio, can you describe how any allocation of the AFI  
13 contribution would impact the JSNs' secured recovery in your  
14 waterfall model?

15 A. In the waterfall model, if you have a direct lien on any  
16 portion of the AFI contribution, that would increase the JSNs'  
17 secured recovery associated with that.

18 If it's -- if you're asking about the AFI contribution of  
19 2.1 billion, in scenario A it's assumed as indicated in the  
20 disclosure statement that the 2.1 is allocated to the legal  
21 entities, as described in the disclosure statement; and through  
22 the waterfall the intercompanies get the benefit associated  
23 with that.

24 Q. Just focusing for a second on the AFI contribution, would  
25 any allocation of the AFI contribution increase the JSNs'

1 secured recovery on a dollar-for-dollar basis under your model?

2 MR. KERR: Objection, Your Honor.

3 A. Yes.

4 THE COURT: Overruled. You can examine him further.  
5 I'm not sure I understand what he's just said, but, I mean, I  
6 heard the words.

7 Q. Can you describe for the Court why it is that the -- any  
8 allocation of the AFI contribution would impact the JSNs'  
9 secured recovery on a dollar-for-dollar basis?

10 A. Because if they are allocated directly, a secured  
11 interest, then what you basically have is an increase in the  
12 security value.

13 If you look at scenario C and you're running A and B  
14 together, it's not dollar-for-dollar. In scenario B it's  
15 dollar-for-dollar. Scenario C you increase, say, by say 1.2  
16 billion dollars you increase and you say that's a secured  
17 recovery. That means there's less to go to the intercompany  
18 and the equity pledges.

19 So it's not a dollar-for-dollar in scenario C. It is in  
20 scenario B.

21 Q. Okay. So just -- I want to wait to get to a circumstance  
22 where there's a recovery for both intercompany claims and the  
23 AFI contribution. So let's just --

24 A. Okay.

25 Q. -- put that to the side for a second.

1 Am I correct that scenario A sets forth the impact on the  
2 JSNs' secured recovery if intercompany claims are allowed?

3 A. That's correct.

4 Q. And am I correct that if there is an allocation of some  
5 portion of the AFI contribution, that allocation would increase  
6 the JSNs' secured recovery on a dollar-for-dollar basis?

7 A. That would be scenario B, yes, it would be dollar-for-  
8 dollar.

9 Q. Okay. Now, if there is both an allocation of the AFI  
10 contribution and intercompany claims are allowed, how would  
11 that, those two items working together, impact the JSNs'  
12 secured recovery?

13 A. Well, the secured recovery goes up for the dollar-for-  
14 dollar in scenario B. However, the intercompany -- the value  
15 of the intercompany and the equity pledges goes down by a  
16 percentage, you have to run it through the model. So it's not  
17 totally dollar-for-dollar, but you're increasing the value for  
18 the direct security interest and the intercompany value,  
19 because instead of having a 2.1-billion-dollar contribution,  
20 you're having something less than that, the value of the  
21 intercompanies and equity pledges goes down slightly.

22 Q. Okay. And are you able to run any recovery scenario based  
23 on the determination that the Court makes with respect to the  
24 JSN liens on intercompany claims and the AFI contribution  
25 through your waterfall model?

1 A. I can run any of those through any of the model, yep.

2 Q. Mr. Kerr asked you a series of questions about the 16.6  
3 billion dollars of pre-petition forgivenesses that were  
4 identified in Mr. Renzi's report. Do you recall those  
5 questions?

6 A. Yes, I do.

7 Q. Do the debtors include in their 16.6-billion-dollar number  
8 forgivenesses by debtor entities of intercompany balances with  
9 nondebtor entities?

10 A. Yes, in the 16.6 billion there is at least, I think it's  
11 around 6.3 billion dollars of intercompany receivables that are  
12 between receivables of entities in the model with entities  
13 outside of the model.

14 Q. And what would be the effect of including forgivenesses of  
15 debt to nondebtor entities on JSN recoveries, if you could  
16 model that?

17 A. If we had the information to model, it would have to  
18 increase the recoveries, the exact extent I'd have to get the  
19 information to model it through, but 6.3 --

20 THE COURT: Mr. Fazio, when you say it would increase  
21 the JSNs' recovery, after phase 1, I concluded the JSNs are  
22 undersecured by 318 million dollars.

23 If the plan is confirmed and the JSNs remain  
24 undersecured, it won't have any effect on the JSNs' recovery,  
25 correct? Not secured recovery; recovery. Is that correct?

1 I mean we're going through this exercise because they  
2 remain 318 million dollars undersecured after phase 1. You can  
3 keep talking about their secured recovery will increase dollar-  
4 for-dollar or by some amount. But if they remain undersecured,  
5 it will have no effect on their recoveries, isn't that true?

6 THE WITNESS: I guess that's more of a legal  
7 determination --

8 THE COURT: Well, I'm asking you to assume that they  
9 remain undersecured after phase 2. If the plan is confirmed,  
10 if they get a portion of the AFI contribution or a portion of  
11 intercompany claims, if they're still undersecured it won't  
12 have any effect on the recovery if the plan is confirmed, isn't  
13 that true?

14 THE WITNESS: There is one scenario in the deficiency  
15 that nobody asked in front of you, but it depends on the legal  
16 determination of the deficiency and whether or not if you're --

17 THE COURT: Let's put the deficiency issue aside.

18 THE WITNESS: Okay. If they're undersecured after --  
19 and considering the intercompanies, the AFI contribution and  
20 the intercompany receivables of 6.3 billion that have not been  
21 modeled, and if they're still undersecured, then I think you're  
22 correct.

23 THE COURT: Okay. Go ahead.

24 THE WITNESS: If you don't include the deficiency.

25 BY MR. PERRY:

1 Q. Why don't you go to paragraph 38 of your direct testimony.  
2 This was a chart that Mr. Kerr took you through.

3 What are the assumptions used for the JSN secured recovery  
4 columns set forth in paragraph 38 of your direct testimony?

5 A. As you see, those numbers don't change. So the assumption  
6 was the liquidation analysis that was prepared by Mr. Renzi.  
7 And so that was kept constant throughout this scenario A in the  
8 rebuttal.

9 Q. So am I correct that you were simply adopting Mr. Renzi's  
10 secured recovery figure for purposes of this analysis?

11 A. That was the assumption made in this analysis, correct.

12 Q. Do you -- on the subject of Mr. Renzi, do you understand  
13 FTI to have developed a waterfall model?

14 A. Yes, I do.

15 Q. And Mr. Horowitz asked you a series of questions about  
16 Houlihan's development of its waterfall model.

17 My question to you, sir, is, is the Houlihan model  
18 intended to be different than the FTI model?

19 A. No. The raw model itself is substantially similar and  
20 would run various scenarios with Mr. Renzi and his work and his  
21 workforce at -- I've helped him develop a model, and they're  
22 substantially similar models.

23 Q. Mr. Kerr asked you some questions about your assumption  
24 that if intercompanies were valid unsecured claims would stay  
25 the same. Are you familiar with the terms of the global



1 settlement, sir?

2 A. Yes, I am.

3 Q. And are you aware of whether any unsecured creditor can  
4 object if the Court rules for purposes of calculating the JSN  
5 claims, that intercompany claims are valid?

6 THE COURT: I don't understand your question.

7 Q. Do you know whether under the global settlement, any other  
8 party can object if, for purposes of calculating the JSN  
9 claims, the Court rules that the intercompany claims are valid?

10 THE COURT: I still don't understand. It sounds like  
11 you're asking for a legal opinion from the witness, and I'm not  
12 going to permit you to ask this witness for legal opinions.

13 MR. PERRY: Understood, Your Honor.

14 I have no further questions, Your Honor.

15 THE COURT: Thank you. Any further recross, Mr. Kerr?

16 MR. KERR: No, Your Honor.

17 THE COURT: All right.

18 All right, Mr. Fazio, you're excused.

19 Mr. Perry, are you going to offer the -- the direct is  
20 still not in, so.

21 MR. PERRY: Subject to Your Honor's rulings earlier we  
22 offer the direct testimony of Mr. Fazio with the exhibits  
23 thereto.

24 THE COURT: Mr. Kerr?

25 MR. KERR: Subject to Your Honor's rulings that were

1 on the record about what portions should be redacted, we don't  
2 have an objection to the remaining portion.

3 THE COURT: All right. I would appreciate it if,  
4 since I have two competing versions, neither quite what I've --  
5 consistent with what I've ruled, if the two of you can agree on  
6 one final version reflecting the Court's rulings, I would  
7 appreciate that.

8 MR. KERR: We will do that, Your Honor.

9 THE COURT: So with the Court's rulings, the direct  
10 testimony of Michael Fazio, which is ECF 5711, and I guess it  
11 includes those portions of Exhibits A and Exhibit B, are in  
12 evidence. Okay?

13 (Direct testimony of Michael Fazio was hereby received into  
14 evidence as Defendants' Exhibit, as of this date.)

15 THE COURT: All right. Do you have any further  
16 witnesses, Mr. Cohen?

17 MR. COHEN: We have no further witnesses, Your Honor.

18 There is an evidentiary issue we'd like to raise with  
19 the Court.

20 THE COURT: Okay.

21 MR. COHEN: It came up first during my opening  
22 statement and it had to do with whether the examiner's report  
23 was going to be considered for the limited purpose of  
24 identifying potential claims and potential damages, which we  
25 had understood from the Court's earlier statements at an August

1 30th hearing that that would come in.

2 We would like the report to come in for those limited  
3 purposes and we'd be prepared to brief that at the Court's  
4 convenience.

5 THE COURT: Mr. Kerr?

6 MR. KERR: Your Honor, we would object to that. After  
7 Mr. Cohen's previous raising the issue before, I went back and  
8 looked, and I apologize, I don't have it here with me, but I  
9 believe that Your Honor had made very clear the examiner report  
10 was not going to be coming in for any purpose.

11 So we object to that, Your Honor, and we could brief  
12 it, if you'd like.

13 THE COURT: No, the --

14 MR. O'NEILL: The committee concurs, Your Honor.

15 THE COURT: Mr. O'Neill.

16 The objection is sustained.

17 Mr. Cohen, the evidence in the record reflects  
18 testimony regarding certain claims that the examiner identified  
19 in his report. There's conflicting evidence that's been  
20 offered with respect to claims relating to the tax allocation  
21 agreements. There's conflicting evidence that's been offered,  
22 I guess, with the MSR swap. And there's conflicting evidence  
23 that's been offered with respect to allocation of revenue from  
24 the broker claims.

25 There is, I believe -- and when we talk about where we

1 go from here, I think without having gone back and looked at  
2 everything, there is some evidence about securities claims,  
3 some evidence about avoidance claims, and maybe one or two -- I  
4 mean it seemed to me, Mr. Cohen, that your evidence related to  
5 the three specific claims that I just referenced.

6           Were there others that you -- and as to those, I mean  
7 I don't think you need the examiner report. You've put in  
8 evidence arguing that there are breach of contract claims for  
9 those three specific matters. They were identified in your, in  
10 the pre-trial order; they were identified in your objection to  
11 confirmation. You did introduce and there was conflicting  
12 witness testimony that I guess I'll ultimately have to resolve.  
13 But it seems to me that you've gotten -- you've had the  
14 opportunity and have introduced evidence with respect to those  
15 three specific claims which you assert are breach of contract  
16 claims. The proponents dispute some or all of those as either  
17 being avoidance claims or whatever.

18           So I think you've had a fair opportunity to offer  
19 evidence with respect to claims. When I sustained -- for  
20 example when I sustained the objection to the Lyons report, I  
21 specifically noted that -- not noted, it's in the text -- but  
22 the order references the fact that the parties could introduce  
23 nonhearsay evidence with respect to claims.

24           So you've had that opportunity. So the bottom line is  
25 the offer of the examiner's report for any purpose, the

1 objection to that is sustained.

2 MR. COHEN: Your Honor, you're certainly right that  
3 with respect to the three contract claims that you've  
4 identified we have introduced nonhearsay evidence --

5 THE COURT: Right.

6 MR. COHEN: -- consistent with the Court's  
7 instructions. What we understood from the August 30th  
8 statement was that that was not a hearsay purpose, the  
9 examiner's identification of the nature of claims -- potential  
10 claims and potential damages. So to an extent it certainly  
11 influenced the discovery we took and the way we put on our  
12 case.

13 We don't think those are hearsay portions, but I  
14 understand the Court's ruling.

15 THE COURT: Okay. As I indicated, I mean there is  
16 some evidence that has come in with respect to other claims.  
17 For example -- correct me if I'm wrong, Mr. Kerr -- I thought  
18 that the committee's STN motion, the committee's STN motion,  
19 the senior unsecured noteholders', the trustees', STN motion --  
20 I thought those came into evidence without objection, and those  
21 identify other claims other than the contract claims. So  
22 that's in evidence as well.

23 MR. KERR: I believe that's correct, Your Honor.

24 THE COURT: Okay, so in any event, my ruling stands  
25 with respect to the examiner's report.

1 MR. COHEN: Understood.

2 THE COURT: Okay. Let me ask, do the -- are there any  
3 other parties that object to confirmation of the plan that wish  
4 to offer evidence in support of their objection?

5 No one has rise to that.

6 So the question from the Court then is, do the  
7 objectors to the plan and the defendants in the two adversary  
8 proceedings rest?

9 MR. COHEN: Your Honor, with the caveat that with  
10 respect to the deposition designations --

11 THE COURT: Yes.

12 MR. COHEN: -- there are a number of exhibits --

13 THE COURT: I agree.

14 MR. COHEN: -- big long list we can work through --

15 THE COURT: Okay.

16 MR. COHEN: -- and we will do that as we try and clear  
17 the objections in the designations and the rest of the  
18 documents.

19 THE COURT: I was wasn't seeking to preclude any of  
20 that, Mr. Cohen. I know we have to -- I know you'll endeavor  
21 as best you can to resolve as many objections as you can.  
22 So --

23 MR. COHEN: We certainly will.

24 THE COURT: Okay. With that caveat -- Mr. Kerr, what  
25 do you want to say?

1 MR. KERR: Just so we're clear, Your Honor. I  
2 understand from Mr. Cohen that there is both deposition  
3 designations, but there are additional exhibits you --

4 MR. COHEN: Documents that are in connection with the  
5 deposition designations. So we'll work through both of those.

6 MR. KERR: So these are documents that are being, that  
7 were identified during the depositions and offered -- I'm just  
8 trying to understand if they're offering different exhibits or  
9 just --

10 THE COURT: That's what I was understanding Mr. Cohen  
11 to be saying.

12 MR. COHEN: I am. I am.

13 MR. KERR: All right. Well, then we'll work through  
14 those issues --

15 THE COURT: Okay.

16 MR. KERR: -- Your Honor, and straighten them away.

17 THE COURT: Okay. Mr. Cohen, subject to ironing out  
18 issues of objections to deposition designations or exhibits  
19 identified and referred to in depositions for which an excerpt  
20 is being offered, do the plan objectors and defendants in the  
21 phase 2 of the adversary rest?

22 MR. COHEN: I'm told that my list may include certain  
23 other documents --

24 THE COURT: Well, no, I don't want to know about other  
25 documents. I mean if you've got other documents, let's deal

1 with other documents.

2 MR. COHEN: Okay.

3 THE COURT: What I understood the parties agreed and  
4 what I had said before earlier in this trial, that with respect  
5 to the deposition designations, counter-designations and  
6 objections, and I include with that if there are exhibits that  
7 are referred to and are subject of testimony and deposition  
8 testimony that's being offered, I'll wait on that. But I  
9 don't, no one should have any misunderstanding; I'm not --  
10 there is no chance to go back and decide I want these exhibits  
11 or those exhibits.

12 So if you've got exhibits you wish to offer now that  
13 are other than what is included in the references in the  
14 deposition designations and counter-designations, now is the  
15 time. Because you're going to rest.

16 MR. COHEN: I understand. I understand. If I could  
17 have a brief recess to look at my list.

18 THE COURT: Okay. We'll take a fifteen-minute recess.  
19 Before you do that, Mr. Kerr, are the proponents  
20 offering any rebuttal?

21 MR. KERR: No, Your Honor.

22 THE COURT: Okay. All right. We'll take a fifteen-  
23 minute recess.

24 MR. KERR: Thank you, Your Honor.

25 (Recess from 10:22 a.m. until 10:43 a.m.)



1 THE COURT: Please be seated.

2 Mr. Perry?

3 MR. PERRY: One piece of housekeeping, Your Honor.

4 Yesterday -- or Friday, I guess -- we offered a series of  
5 exhibits in connection with Mr. Bingham. You asked that we  
6 file --

7 THE COURT: Yes.

8 MR. PERRY: -- the list. We've done so at docket 5938  
9 and we would now offer the exhibits set forth in docket 5938  
10 into evidence.

11 THE COURT: Mr. Kerr?

12 MR. KERR: We have no objection to that, Your Honor.

13 THE COURT: All right. So those exhibits -- and this  
14 was done at the Court's request -- those exhibits that are  
15 listed on the document filed as ECF 5938 are all admitted in  
16 evidence.  
17 (Exhibits listed on ECF 5938 were hereby received into evidence  
18 as Defendants' Exhibit, as of this date.)

19 MR. KERR: Your Honor, Charles Kerr. One other  
20 housekeeping matter. We had done a similar thing with Ms.  
21 Westman's exhibits. We had filed that after conferring with  
22 the JSNs.

23 After it was filed we discovered there was one  
24 transposition of numbers, so we refiled it as a corrected list  
25 of plan confirmation exhibits offered into evidence in

1 connection with the direct testimony of Barbara Westman. That  
2 was filed yesterday with ECF 5937. It was just a correction of  
3 one exhibit number. But we wanted to make sure it was correct.

4 THE COURT: Okay. Mr. Cohen?

5 MR. COHEN: So, Your Honor, before we broke --

6 THE COURT: No, but just with respect to -- could you  
7 just -- Ms. Miller?

8 MS. MILLER: We have no objection.

9 THE COURT: All right. So the Westman exhibits that  
10 are admitted in evidence are listed in the document filed on  
11 ECF as 5937.

12 Okay, Mr. Cohen.

13 MR. COHEN: All right. Before we broke I handed Mr.  
14 Kerr the list of documents that we would like added to the  
15 record.

16 Unfortunately, the version that was prepared to bring  
17 into court didn't have his objections or the witnesses with  
18 whom they were used on.

19 What he's graciously agreed to do, with the Court's  
20 indulgence, it take a look at the list, get back to us tonight  
21 and we can get you a final list and resolve any objection  
22 tomorrow.

23 THE COURT: Mr. Kerr?

24 MR. KERR: Your Honor, Mr. Cohen is correct. There is  
25 about 200 documents on this list. I understand that some of

1 them are documents referenced in the deposition designations,  
2 some of them may already be in evidence, some are -- so I think  
3 we've both been able to work cooperatively before, and we want  
4 to do it again.

5 So we can do this quickly and make sure that the  
6 record subject to this -- these exhibits going in or these  
7 determinations about these exhibits and the deposition  
8 designations we can then close the record.

9 THE COURT: So we have a hearing tomorrow at 4?

10 MR. KERR: We will have it done by then, Your Honor.

11 THE COURT: I don't want to go too late. So put this  
12 way, if you can't resolve all of the issues, if there are  
13 objections, come in at 3. Okay? Is that okay?

14 MR. KERR: We'll do that, Your Honor.

15 THE COURT: All right. So the hearing tomorrow at 4  
16 is with respect to which settlement again? Somebody remind me.

17 MR. LEE: Kessler, Your Honor.

18 THE COURT: Kessler, right. Because of scheduling  
19 issues about some of the counsel for the objector, PNC, that  
20 hearing on the approval of the Kessler settlement which is part  
21 of the plan confirmation is scheduled for tomorrow at 4.

22 And so we're clear, if -- Mr. Cohen, if you're able to  
23 resolve issues with Mr. Kerr on the exhibits, then just come in  
24 at 4, but otherwise come in at 3.

25 MR. KERR: Your Honor, just again, so I'm perfectly

1 clear what Your Honor is directing to us do, we'll do that with  
2 respect to the list of exhibits that Mr. Cohen just gave me.

3 With respect to the deposition designations --

4 THE COURT: That's not tomorrow.

5 MR. KERR: Okay, great.

6 THE COURT: Okay. What's going to happen on the  
7 depositions is, the two of you are going to work cooperatively  
8 the way you have on everything else --

9 MR. KERR: Yes, Your Honor.

10 THE COURT: And you're going to try and resolve as  
11 many of the objections to the deposition designations, counter-  
12 designations, et cetera as possible.

13 MR. COHEN: Exactly.

14 THE COURT: And the exhibits that are referred to in  
15 the deposition, some of them may get sorted out tomorrow in any  
16 event, okay?

17 MR. COHEN: Correct.

18 THE COURT: and subject to the exhibits we'll deal  
19 with tomorrow, do you rest?

20 MR. COHEN: We do.

21 THE COURT: Okay.

22 And so -- just so the record is clear, the objectors  
23 to the plan and the defendants in phase 2 of the adversary  
24 rest, subject to the last issues we have to worked out,  
25 correct?

1 MR. COHEN: Correct, Your Honor.

2 THE COURT: Come on up.

3 MR. SCHLECKER: Your Honor, David Schlecker, from Reed  
4 Smith on behalf of Wells Fargo as collateral agent. We do  
5 rest, Your Honor.

6 THE COURT: Okay. Thank you very much. I appreciate  
7 it.

8 All right. And I take it there is no rebuttal case?

9 MR. KERR: Your Honor, Charles Kerr. On behalf of the  
10 debtor, there is no rebuttal case.

11 THE COURT: So what I thought I would do now, I  
12 indicated that I would try and raise some questions and give  
13 some guidance about things that I want to be sure are covered  
14 in the post-trial briefing. And you can order a transcript of  
15 what I'm going to list I may not go through everything on my  
16 three-page list, but I'll go through some of them.

17 So these are questions that I have. Some of them are  
18 hypotheticals, many of them.

19 If pursuant to the cash management system ten million  
20 dollars in cash is swept from the accounts of RFC and deposited  
21 into a ResCap concentration account, what security interest  
22 would the JSNs hold?

23 If instead of sweeping the money into the ResCap  
24 concentration account, RFC held the funds in its own account,  
25 what liens would the JSNs have?

1 Is there any difference in the economic substance of  
2 the two transactions from the standpoint of a secured creditor  
3 that would have a lien on the cash, whether it was in the  
4 ResCap or RFC accounts?

5 Two: If journal entries were recorded in RFC's ledger  
6 showing a receivable from ResCap for ten million dollars and in  
7 ResCap's ledger showing a payable from ResCap to RFC, would AFI  
8 and the JSNs have a lien on the receivable?

9 Three: Would ALI -- AFI, excuse me. If I said ALI, I  
10 typed wrong. Would AFI and the JSNs have a lien on the ten  
11 million dollars in the concentration account? And I'm  
12 referring to ResCap's concentration account.

13 Four: Can the JSNs assert a lien on both the ten  
14 million dollars in the ResCap concentration account and the  
15 intercompany receivable? What is the legal or economic basis  
16 for being able to assert a lien on both? Would permitting the  
17 lien on both the cash and the receivable result in double  
18 accounting?

19 Fifth: If RFC borrows ten million dollars from AFI  
20 under the revolver and purchases or originates ten million  
21 dollars of mortgages with the proceeds, what if any lien do the  
22 JSNs have?

23 If the loan from AFI was under the revolver, would  
24 both AFI and the JSNs have a lien on the mortgages?

25 Six: If ResCap then directed a release of the liens

1 on those mortgages so it could borrow from the AFI LOC, with  
2 the mortgages then pledged to the AFI LOC, would the JSNs have  
3 any remaining lien?

4 Six (sic): If instead of RFC borrowing the money  
5 directly from AFI under the revolver, ResCap borrowed the ten  
6 million dollars, made a journal entry for an advance to RFC  
7 which then purchased the same ten million dollars in mortgages,  
8 what liens would the JSNs have? Is there any difference in the  
9 economic substance of this transaction from the one I listed as  
10 number 5?

11 If the Court concludes that the 2.1-billion-dollar  
12 payment from AFI must be allocated, please address each of the  
13 direct and third-party claims against AFI as to which evidence  
14 was introduced at trial, including third-party claims against  
15 AFI for violation of the 1933 and 1934 acts. What is the  
16 magnitude of the claims asserted were claims asserted for  
17 statutory control person liability, and if so what are the  
18 applicable legal standards for a Section 15 or Section 20  
19 control person liability claim?

20 Address third-party aiding and abetting or other  
21 common law claims against AFI.

22 Address direct claims for avoidance or common law tort  
23 claims. Again, this is such as has been introduced into  
24 evidence. And last, the breach of contract claims. And before  
25 the break, I briefly referenced the three that the objectors

1 identified.

2 Do the JSNs have a lien on intercompany receivables  
3 between obligors or guarantors under the JSN loan documents?  
4 As a comment, on my part, it would seem counterintuitive to  
5 recognize liens on intercompany transactions in such  
6 circumstances because it could result in double or more  
7 counting. It relates to some of those earlier hypotheticals I  
8 gave.

9 I know this is addressed in the pre-trial order and  
10 the briefing already, but if the JSNs are undersecured, may  
11 they nevertheless recover post-petition interest and fees  
12 through aggregation of recoveries? May the JSNs' recovery on  
13 their deficiency claims pay post-petition interest and fees?  
14 That's already addressed, but I think you need to address that  
15 in your closing briefs.

16 If the JSNs are unimpaired at some debtors, may they  
17 apply their recoveries from those debtors to post-petition  
18 interest and fees.?

19 This is already addressed in the pre-trial briefing,  
20 but I'm assuming it will be specifically addressed in post-  
21 trial findings of fact and the briefs. Did the AFI -- does the  
22 AFI proposed 2.1-billion-dollar payment create a "new asset"  
23 created post-petition through considerable effort and expense  
24 from the debtors' estates, and as such the contribution need  
25 not be allocate among the specific claims that were released?



1 May AFI receive a third-party release of bank claims  
2 relating solely to separate bank accounts maintained by AFI  
3 that do not relate to accounts or activities of ResCap?

4 And this relates to the Wells Fargo as successor to  
5 Wachovia: In the plan proponents' omnibus reply to objections  
6 to confirmation at page 46, that brief says -- this is not  
7 Ally's brief, this is the proponents' reply -- it says through  
8 discussions in which Ally has confirmed -- I'm reading part of  
9 it, but it was -- "Through discussions in which Ally has  
10 confirmed what was already plain from the face of the release  
11 provisions, that claims arising solely out of Ally's business  
12 in not the debtors are not released and enjoined." And then  
13 also at pages 50/51, "To the extent WFBNA legitimately has  
14 claims against Ally that would not affect the debtors -- which  
15 WFBNA does not articulate either -- then those claims would not  
16 be covered by the third-party release."

17 So I had the proponents' position about that, but not  
18 AFI's. And at least whether -- there is that stipulation that  
19 was -- of facts that was entered, and I haven't gone back to  
20 review underlying documents. Its not clear to me whether --

21 I guess I would ask this question: Does AFI have a  
22 claim for indemnification against ResCap for bank claims that  
23 relate exclusively to bank accounts maintained by AFI? Did AFI  
24 file such a POC?

25 So it's just unclear to me whether AFI agrees with the

1 statements that I've quoted from the reply to -- the plan  
2 proponents' omnibus reply to objections, which seemed to say  
3 AFI doesn't object if it relates exclusively to AFI.

4 So I'm sure if I -- that was part of the weekend's  
5 endeavor trying to go through my notes and see what questions I  
6 have. So those -- that isn't to say you won't cover other  
7 things, but at least that was what came to mind over the  
8 weekend.

9 And let me just -- I didn't put it on this list,  
10 but -- and the issue came up again this morning briefly in Mr.  
11 Fazio's testimony. And that is -- and this is in the joint  
12 pre-trial conference order, and it's included in both the --  
13 not in its entirety, but the objectors' confirmation objections  
14 and in the debtors' --the proponents' omnibus reply, this issue  
15 of how a deficiency claim by the -- let's assume for discussion  
16 that the JSNs are undersecured. What are they entitled to  
17 recover as part of a deficiency claim?

18 They obviously assert they're entitled to post-  
19 petition interest, fees, essentially what I read them as saying  
20 is they're entitled to everything they're asking for, if  
21 they're oversecured they're entitled to it, even if  
22 undersecured -- that may be a slight overstatement, but that  
23 was the gist of what I read. Some of that is addressed in the  
24 papers, but that needs to be spelled out.

25 Let me say, the plan proponents dismissed it --

1 dismissed that argument, fairly summarily, and I expect to see  
2 a fuller treatment from both sides about the issue. Anybody  
3 have any questions?

4 So I've already agreed to the schedule that you all  
5 worked out. That was acceptable to the Court.

6 I guess my courtroom deputy asked about whether you  
7 can leave things -- this is logistic -- whether you can leave  
8 things in court, as long as the counsel table is cleared off, I  
9 have no problem about you leaving what you need to leave here  
10 for the December 11th closing arguments.

11 Mr. Kerr?

12 MR. KERR: Your Honor, Charles Kerr on behalf of the  
13 debtors. It was our intention to remove pretty much everything  
14 we brought here tomorrow.

15 THE COURT: That would make me brokenhearted.

16 MR. KERR: Your Honor we could leave the empty boxes  
17 here, or something. Just make you feel comfortable.

18 THE COURT: Paper that would get put on the other side  
19 would be okay, but --

20 MR. KERR: We'll do our best to not leave you those  
21 Christmas presents and just take them away at this point, okay?

22 MR. COHEN: We will do the same.

23 MR. UZZI: Your Honor, I thought I'd live the easel.

24 THE COURT: Well, the charts in front of the podium  
25 too. It's been -- you did a wonderful job of holding it up,

1 too, Mr. Uzzi.

2 MR. KERR: Your Honor, one additional question, in  
3 terms of timing on the 11th, we'll be here at 10 o'clock on the  
4 11th?

5 THE COURT: Yeah, let's start it at 10:00. You're  
6 moving whatever else was on the calendar for the 11th?

7 MR. KERR: I'm looking to Mr. Lee.

8 THE COURT: And I think we should be able to start at  
9 10 and I'm going to give everybody, you know, I'm going to give  
10 you all a chance to say what you have to say, and I undoubtedly  
11 will have questions.

12 MR. KERR: Okay.

13 THE COURT: Okay.

14 MR. KERR: Good. Thank you, Your Honor.

15 THE COURT: All right. Thank you very much. You  
16 know, obviously this was the confirmation hearing as well as  
17 the phase 2 of the adversary proceedings. It was exactly as I  
18 thought in that the confirmation objections, about ninety-five  
19 percent of it related to the phase 2 confirmation issue, so I'm  
20 glad we did it together.

21 And I know these issues have been extremely hard  
22 fought and I'm sure will continue to be -- although Judge Peck  
23 is very happy to meet with you all, and I hope you will take  
24 him up on that.

25 But I want to express my appreciation. I think

1 that -- I didn't set this as a time limit, but everybody  
2 handled this very expeditiously and I appreciate that. It was  
3 efficiently done. I thought counsel performed admirably on all  
4 sides and I very much appreciate that. And I assume it will  
5 continue through closing arguments, right?

6 Thanks very much.

7 Mr. Marinuzzi?

8 MR. MARINUZZI: Your Honor, there are two settlements  
9 that are on for today, one with the National Credit Union  
10 Administration Board and then there is one relating to a claim  
11 asserted by at THE FHFA.

12 I don't know that everybody needs to stay for it. To  
13 the extent they'd like to leave.

14 THE COURT: Anybody that wants to be excused, can be  
15 excused. Why don't you have a seat for a couple minutes, and  
16 anybody who wants to be excused, please feel free. All right?

17 (Pause)

18 THE COURT: Okay. Go ahead, Mr. Marinuzzi.

19 MR. MARINUZZI: So, Your Honor, we've got two motions  
20 seeking authority to enter into settlements, one of which was  
21 opposed by the JSNs, one of which has no objection.

22 Would Your Honor prefer to start with the one with no  
23 objection?

24 THE COURT: Yes.

25 MR. MARINUZZI: Okay. So that, Your Honor, is the

1 debtors' application seeking -- debtors' motion seeking  
2 approval for the debtors to enter into a settlement agreement  
3 between and among the debtors, AFI, and the committee, and this  
4 is a settlement relating to the FHFA's claim that's been  
5 settled as part of the plan.

6 It was filed on the docket, at docket ECF number 5828  
7 and supported by the declaration of Lewis Kruger at 5829 of the  
8 docket.

9 Your Honor, a little bit of history. Freddie Mac  
10 purchased approximately six billion dollars of RMBS issued by  
11 the debtors, and the FHFA took over for Freddie Mac as  
12 conservator and commenced a series of lawsuits including one  
13 which named the debtors, certain of the debtors, Ally, and  
14 certain of its affiliates.

15 When we filed for bankruptcy, the FHFA dismissed or  
16 dropped us from the lawsuit and continued with AFI. We, in  
17 this bankruptcy court, filed a motion seeking to extend the  
18 stay to cover that litigation which went up and down between  
19 the district court and the Second Circuit. But it's been  
20 settled.

21 The FHFA in the bankruptcy case, as conservator, filed  
22 six proofs of claim against the debtors. And under the plan,  
23 as it was originally proposed and filed by the plan proponents,  
24 the full treatment was the subordination of those claims, but  
25 to the extent they could demonstrate that the claims shouldn't

1 be subordinated, the FHFA would get some recovery of  
2 approximately two percent.

3 And since the August 21st disclosure statement here  
4 and where Your Honor made some comments regarding the treatment  
5 of FHFA's claims, the parties, including Ally-AFI, have worked  
6 hard to try to resolve those issues globally and also as part  
7 of that in connection with the plan.

8 So we are pleased that on or around October 25th, 2013  
9 the FHFA and AFI-Ally entered into a settlement agreement, a  
10 term sheet. And it resolved the litigation brought by the FHFA  
11 against Ally for a payment that's not public and undisclosed.

12 As part of that settlement the FHFA agreed to resolve  
13 their issues in connection with the bankruptcy plan and to  
14 support it so long as we made certain modifications and agreed  
15 to allow their claims as follows.

16 So for all six of the claims filed against the  
17 debtors, the FHFA claim will be allowed in the amount of 1.2  
18 billion dollars against ResCap and will receive on the  
19 effective date of the plan a 24-million-dollar cash  
20 distribution.

21 As part of the term sheet between FHFA and Ally, the  
22 FHFA has agreed to direct the debtors, the plan proponents to  
23 make that 24-million-dollar distribution to AFI, and we've  
24 agreed to do that; and the plan and confirmation order provide  
25 for that.

1           The objections filed by the FHFA and Freddie Mac as  
2 part of this are gone. They're withdrawn. We think that's  
3 big, because it doesn't require the Court to address a number  
4 of difficult issues.

5           One of the issues that was raised by the FHFA was the  
6 applicability of HERA and specific provisions of HERA relating  
7 to avoidance actions. That took a position that they are  
8 senior lien, in effect, on those actions. We disagreed. But  
9 fortunately the resolution doesn't require the Court to decide  
10 it. And importantly, from the FHFA's perspective, if there's  
11 no decision on it, the Court doesn't address it at all and the  
12 confirmation order's been modified to make it clear. They were  
13 concerned about precedent, we understand that; and so we've  
14 accommodated them in that respect.

15           So we're clear, Your Honor, nothing in this settlement  
16 affects whatever rights the FHFA as conservator for Freddie  
17 Mac, have to receive distributions under the waterfall on  
18 account of the RMBS certificates that they hold. This is  
19 solely with respect to those six enumerated proofs of claim  
20 that were filed against the debtors.

21           As I noted, there has been no objection. And unless  
22 the Court has any questions, we'd ask that the Your Honor  
23 approve our entry into the --

24           THE COURT: What happens if the plan is not confirmed?

25           MR. MARINUZZI: All bets are off. We'll be fighting



1 over whatever treatment we get -- we give them in any plan.

2 THE COURT: All right. Does anybody else wish to be  
3 heard with respect to the settlement of the FHFA?

4 All right. It's approved.

5 MR. MARINUZZI: Thank you, Your Honor. And that  
6 brings us to the settlement with the National Credit Union  
7 Administration Board, and I will cede the podium to my  
8 colleague James Beha.

9 THE COURT: Okay.

10 MR. BEHA: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. BEHA: James Beha --

13 THE COURT: I saw you checked your watch to make sure  
14 it was still morning.

15 MR. BEHA: I wanted to make sure I got it right. Yes.  
16 Try to be precise. James Beha from Morrison & Foerster on  
17 behalf of the debtors.

18 I'm here to present Your Honor with the settlement --  
19 the proposed settlement that National Credit Union  
20 Administration Board as liquidating agent for Western Corporate  
21 Federal Credit Union and U.S. Central Federal Credit Union.

22 The motion is at docket number 5535 and it's supported  
23 by declarations from Mr. Kruger -- that's at 5536 -- and a  
24 declaration from Mr. Lipps, which is at 5537.

25 The NCUAB's eleven proofs of claim in this bankruptcy

1 arise from two pre-petition lawsuits that it filed against the  
2 debtors and others as liquidating agent for two failed federal  
3 credit unions, which had purchased the debtors' RMBS  
4 securities. Their proofs of claim in total were approximately  
5 for 293 million dollars.

6 Your Honor may recall that back in July the debtors  
7 objected to those proofs of claim. We had an initial hearing  
8 on that objection here, and Your Honor suggested that  
9 settlement should be explored.

10 We took Your Honor's suggestion seriously. There were  
11 extensive arm's-length, I would say, hard-fought negotiations.  
12 And in October, with the assistance of the committee, the  
13 debtors and the NCUAB reached what we think is an extremely  
14 fair and reasonable settlement.

15 The settlement settles those 233 million dollars of  
16 claims --

17 THE COURT: I thought -- 293 or 233?

18 MR. BEHA: 293; 293, Your Honor, excuse me -- for  
19 allowed claims totaling approximately 78 million dollars.

20 It's a 77.8-million-dollar claim against RALI (ph.)  
21 and 149,000 claim against RFMS-2.

22 There is one limited objection to the settlement.  
23 That is from the ad hoc committee of junior secured  
24 noteholders, and the JSNs' objection is based on their view  
25 that these claims should be subordinated.

1 I know that Your Honor is well aware of this issue,  
2 and it's an issue that the debtors have addressed in connection  
3 with the just concluded hearing, so I won't rehash that, except  
4 just to say that Your Honor has previously ruled and made  
5 clear --

6 THE COURT: In the FGIC case?

7 MR. BEHA: -- that that's something that can be  
8 settled -- yes, FGIC.

9 But other than that limited objection, there are no  
10 objections to the settlement. So I would offer in support, Mr.  
11 Kruger's declaration, dated October 28th. As I said that's  
12 docket entry 5536. And if Mr. Kruger were called to testify,  
13 he would testify to what is in his declaration and he's here  
14 and available for cross-examination.

15 THE COURT: All right.

16 Who wants to be heard in support of the -- well, does  
17 anybody else want to speak in favor of settlement? Mr. Mannal?

18 MR. MANNAL: Your Honor, Doug Mannal on behalf of the  
19 creditors committee. Just briefly, Your Honor. This was a  
20 hard-fought negotiation that took several months to accomplish.

21 Just to clarify, however, the claim, or the allowed  
22 claim that has been agreed to of seventy-eight million dollars  
23 in the aggregate against certain RFC entities is only agreed to  
24 if the plan -- similar to FHFA, if the plan does go effective.

25 THE COURT: All right. Thank you, Mr. Mannal.

1 Anybody else in support?

2 All right. Opposition? Mr. Uzzi?

3 MR. UZZI: Your Honor, very briefly, we filed a  
4 limited objection just to ensure that our plan objection wasn't  
5 waived. We otherwise -- we're dealing with that issue in the  
6 plan objection, and given that the whole settlement is subject  
7 to approval of the plan, I don't need to take up any of your  
8 time.

9 And while I'm at the podium, Your Honor, we won't be  
10 cross examining anybody either, so --

11 THE COURT: Thank you.

12 MR. UZZI: Thank you, Your Honor.

13 THE COURT: Do you want to offer the --

14 MR. BEHA: Yes, Your Honor.

15 THE COURT: Mr. Kruger's --

16 MR. BEHA: If I may, I'd like to offer Mr. Kruger's  
17 declaration. So I do offer it.

18 THE COURT: What's the ECF?

19 MR. BEHA: It's at 5536 on the docket.

20 THE COURT: Okay.

21 MR. BEHA: And there is also a declaration of Jeffrey  
22 A. Lipps submitted in support of the motion. That's at 5537.

23 And Mr. Lipps is here and available to testify,  
24 although I understand that there will be no cross, but we offer  
25 his declaration as well.

1 THE COURT: All right. I take it no objection to  
2 either declaration, Mr. Uzzi?

3 MR. UZZI: No objection.

4 THE COURT: All right. So the Kruger and Lipps  
5 declarations are admitted into evidence.

6 (Declaration of Lewis Kruger was hereby received into evidence  
7 as Debtors' Exhibit, as of this date.)

8 (Declaration of Jeffery Lipps was hereby received into evidence  
9 as Debtors' Exhibit, as of this date.)

10 THE COURT: With respect to the JSNs' limited  
11 objection, I'm going to overrule the objection for purposes of  
12 approving the settlement. It's obviously going to be subject  
13 to plan confirmation. The JSNs have asserted the subordination  
14 objection -- 510 subordination objection as part of plan  
15 confirmation. Nothing I'm ruling on now will prejudice in any  
16 way that issue for purposes of plan confirmation.

17 As has already been noted, in connection with the  
18 contested hearing on approval of the FGIC settlement for which  
19 I wrote an opinion, I specifically concluded there that issues  
20 regarding subordination, whether a claim should or shouldn't be  
21 subordinated, could be settled and that's what's happened here.

22 The result of the settlement here is to reduce a 293-  
23 million-dollar claim to an approximately 78-million-dollar  
24 allowed claim. So having reviewed the papers it's quite easy  
25 and I do find that the settlement is in the best interests --

1 is fair and equitable and in the best interests of the estate.  
2 And so it's approved, and the JSNs' objection on subordination  
3 is certainly preserved for purposes of the confirmation  
4 hearing. Okay?

5 MR. BEHA: Thank you, Your Honor.

6 THE COURT: All right. Anything else we need to deal  
7 with now? Mr. Marinuzzi?

8 MR. MARINUZZI: No, Your Honor.

9 THE COURT: Everybody have a very nice Thanksgiving.  
10 I'll see you tomorrow, I guess, one way or the other. So those  
11 who won't be here, have a nice Thanksgiving.

12 IN UNISON: Thank you, Your Honor.

13 (Whereupon these proceedings were concluded at 11:18 AM)

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

WITNESS	EXAMINATION BY	PAGE
Mr. Fazio	Mr. Kerr	21
Mr. Fazio	Mr. Horowitz	46
Mr. Fazio	Mr. Perry	59

E X H I B I T S

DEFENDANTS'	DESCRIPTION	PAGE
DX-BAM	E-mail chain	59
--	Direct testimony of Michael Fazio	66
--	Exhibits listed on ECF 5938	73
DEBTORS'		
--	Declaration of Lewis Kruger	93
--	Declaration of Jeffery Lipps	93

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

RULINGS

	Page	Line
Additional redactions to Mr. Fazio's	43	23
testimony are sustained in part and		
overruled in part, as delineated on the		
record.		
Debtors' and Ally's settlement with FHFA is	89	5
approved.		
Debtors' settlement with NCUAB is approved.	94	3



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Penina Wolicki*

---

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET\*\*D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: November 26, 2013